CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

FILED FEBRUARY 11, 1943.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff,

vs.

NATHAN MAYO, ROY HUTCHINSON, JOHN DOE I, JOHN DOE II, and John Doe III (the names of John Doe I, John Doe II, and John Doe III being fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being the persons who issued "stop sale notices" against three certain lots of 20% superphosphate fertilizer, the property of the United States of America), Richard Roe I, Richard Roe II, and Richard Roe III (the names Richard Roe I, Richard Roe II, and Richard Roe III being fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being certain sheriffs who are seizing or threatening to seize and sell at public sale all superphosphate fertilizer, the property of the United States of America, shipped into their respective counties), Defendants

COMPLAINT—Filed September 19, 1942

1. This is a civil action brought by the United States of America as plaintiff, of which this Court has jurisdiction under Section 24(1) of the Judicial Code, as amended [28 U. S. C. Section 41(1)]. This action is brought by direction of the Attorney General.

2. The defendant Nathan Mayo is a resident, citizen, and inhabitant of the State of Florida and of the Northern District thereof. He is the Commissioner of Agriculture of the State of Florida. The defendant Roy Hutchinson is an Inspector in the Florida State Department of Agriculture, Inspection Bureau. On information and belief, he is a resident, citizen and inhabitant of the State of Florida and the [fol. 3] Northern District thereof. On information and belief, the defendants John Doe I, John Doe II and John Doe III are Inspectors in the Florida State Department of Agriculture, Inspection Bureau and residents, citizens, and inhabitants of the State of Florida and the Northern District thereof. The names John Doe I, John Doe II, and

John Doe III are fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being the persons who issued "stop sale notices" against three certain lots of 20% superphosphate fertilizer, the property of the United States of America, more fully described in paragraphs 12 and 13 thereof. On Information and belief, said defendants are purporting to act in compliance with the Florida Commercial Fertilizer Law or other Florida statutes the identity of which is unknown to plaintiff. On information and belief, the defendants Richard Roe I, Richard Roe II and Richard Roe III are residents, citizens and inhabitants of the State of Florida and the Northern District thereof. The names Richard Roe I, Richard Roe II and Richard Roe III are fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being certain sheriffs who are seizing and threatening to seize and sell at public sale all fertilizer, the property of the United States of America, shipped into their respective counties. On information and belief, the said defendants are purporting to act in compliance with the Florida Commercial Fertilizer Law or other Florida statutes the identity of which is unknown to plaintiff.

3. The United States of America is engaged in the distribution of fertilizer in the State of Florida. This distribution is part of a soil conservation program of the United States designed to preserve and improve the fertility of the soil of the United States and to accomplish the other purposes enumerated in Section 1 of the Soil Conservation and Domestic Allotment Act (16 U. S. C. Sec. [fol. 4] 590g) under the authority of which and of other Federal statutes said program is being carried on. Such distribution is necessary as a part of such program. The particulars of this program are set forth in the annexed affidavit of Joseph L. Orr, sworn to September 17, 1942, attached hereto. The allegations of said affidavit are hereby incorporated herein by reference. Certain superphosphate fertilizer involved in said program is now in the State of Florida and is owned by the United States. As part of the said program, superphosphate fertilizer is being distributed in the State of Florida to facilitate the planting therein, not later than on or about October 15, 1942, of certain soil conserving crops, notably winter legumes, designed to increase the nitrogen content of the soil and thereby to compensate

for the shortage for fertilizer purposes of chemical nitrogen due to its use in munitions required by the existing war emergency. If nitrogen is supplied in this way it will leave available for war purposes nitrogen which otherwise would have to be used for agricultural purposes unless there is to be a corresponding decrease in the production of agricultural products. Said program must proceed without delay to permit completion of the distribution of said superphosphate fertilizer prior to October 15, 1942. The carrying out of the said program is a part of the sovereign functions of the United States for governmental purposes.

4. Under the purported authority of the Florida Commercial Fertilizer Law, or other statutes the identity of which is unknown to plaintiff, the defendants are interfering with and obstructing and threatening to interfere with and obstruct the United States in its exercise of its sovereign functions as aforesaid in carrying out its program for the distribution of fertilizer in the State of Florida.

5. Said interference and obstruction consists of the issuance of and threats to enforce "stop sale notices" prohibiting the distribution of said fertilizer in the State of [fol. 5] Florida and seizures of and threats to seize and sell at public sale all fertilizer, the property of the United States, shipped into the State of Florida. Said Florida Commercial Fertilizer Law, and any other statutes on which defendants purport to rely, may not be construed and were not intended to apply to property of and transactions by the United States of America, but if so construed said statutes are unconstitutional, in violation of the Constitution of the United States, and beyond the power of the State of Florida. As so construed said statutes violate Article VI, Clause 2 (the supremacy Clause) of the Constitution of the United States and conflict with the acts of Congress providing for the aforesaid soil conservation program and for the functioning and carrying out thereof and for the functioning of the Department of Agriculture of the United States and for the acquisition and disposition of the fertilizer here involved.

6. Said "stop sale notices" and seizures are wholly void. On information and belief the purported ground on which said orders have been issued and said seizures and threats made is that provisions of the said Florida Commercial

Fertilizer Law or other statutes the identity of which is unknown to plaintiff, have not been complied with. Said provisions may not be construed to apply to the fertilizer and the program for its distribution herein involved and if so construed would violate Article VI, Clause 2 of the Constitution of the United States and conflict with the Acts of Congress referred to in the foregoing paragraph of this complaint.

7. The United States and its property and transactions, under the Constitution of the United States, are immune from the Florida Commercial Fertilizer Law and any other statutes on which defendants purport to rely, as well as outside their intended scope, and the police power of the State of Florida under which such legislation was enacted does not under the Constitution of the United States extend [fol. 6] to the United States or to its property and transactions.

8. Notwithstanding the foregoing defendants have issued such "stop sale notices" as aforesaid and are enforcing and threatening to enforce the same, and are also threatening to seize and sell at public sale, in purported compliance with the Florida Commercial Fertilizer Law and other statutes the identity of which is unknown to plaintiff all fertilizer, the property of the United States, shipped into the State of Florida. These threats have been widely publicized, and on September 17, 1942 there appeared in The Pensacola Journal, a newspaper regularly published at Pensacola, Florida, and on information and belief in other newspapers published in the State of Florida, the following Associated Press dispatch, which on information and belief is an accurate report of the announcement of Nathan Mayo referred to therein and in which, on information and belief, the material appearing in quotation marks is accurately quoted from statements of said Nathan Mayo:

AAA Fertilizer Will Be Seized

Tallahassee, Sept. 16 (AP)—Nathan Mayo, Florida Commissioner of Agriculture, today ordered seizure of Federal AAA fertilizer shipments into this State on which inspection fees have not been paid. He said that AAA officials are "ignoring Florida laws."

He also served notice "that he would cancel permits of fertilizer companies 'party to this high handed procedure' of disregarding State fertilizer inspection."
Florida law requires analysis tags showing payment of the State inspection fee of 25¢ a ton to be attached on all fertilizer imported into or sold in this state.

On September 17, 1942, there was received in the Department of Agriculture the following telegram:

[fol. 7] Tallahassee Fla Sept 16 1942

Honorable Claude R. Wickard Sec of Agric Washn D C

Subordinate AAA officials are ignoring Florida Fertilizer Inspection Laws and my information is that they are instructing fertilizer dealers to do likewise on any superphosphates sold through AAA to Florida farmers. This situation has been threshed out pro and con between this Department and AAA officials with unsatisfactory results. Florida laws are very definite and give me no discretion as to enforcement hence am following legal procedure and am having all shipments of superphosphates which do not show evidence of payment of inspection fee seized by sheriff and sold to highest bidder. Am also cancelling right to do business of any concern party to this high handed procedure.

Nathan Mayo Commissioner of Agriculture

Numerous persons utilized by the United States acting on its behalf in the execution of its program for the distribution of said fertilizer in the State of Florida are fearful of the said "stop sale notices" and seizures and threats and unless the enforcement of the "stop sale notices" and the seizures and the carrying out of the said threats be enjoined, said persons will decline to execute the laws of the United States and the carrying out of the program of the United States will be frustrated.

9. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate and undisturbed possession of a certain lot of 19% superphosphate fertilizer, consisting of 54.15 tons, more or less. Said lot of fertilizer is part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

[fol. 8] 10. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-26963, entered into by the United States, through its Department of Agriculture, with Mutual Fertilizer Company, Savannah, Georgia, for the furnishing to the United States by said Company of 1500 tons of said fertilizer. By direction of the United States and in the execution of its program more fully described above, said property was being shipped from Savannah, Georgia, to Monticello, Florida, via the Seaboard Air Line, consigned to Jefferson County Agricultural Conservation Association, an instrumentality and agency of the United States and acting on its behalf. Said shipment was under Government Bill of Lading No. 2621276, in which the said Seaboard Air Line acknowledged receipt of said fertilizer, therein described and referred to in the language of said Government Bill of Lading as "the public property hereinafter described."

11. On September 10, 1942, the following telegram was sent by defendant Nathan Mayo to the Administrative Officer of the said Jefferson County Agricultural Conservation Association:

September 10, 1942

Franklin W. Smith, Administrative Officer Jefferson County Agricultural Association Monticello, Florida

This is your final notice that car of superphosphate consigned to you by Mutual Fertilizer Company, Savannah, Georgia, is under legal stop sale notice as provided by Florida Fertilizer Law account being registered and tagged. Am wiring manufacturer to arrange registration and tagging immediately so goods may be released.

Nathan Mayo Commissioner of Agriculture

Charge to Inspection Bureau
Rush

On September 11, 1942 defendant Roy Hutchinson issued a "stop sale notice" directing Franklin W. Smith, Admin- [fol. 9] istrative Officer of the Jefferson County Agricultural Conservation Association, as aforesaid an instrumentality and agency of the United States and acting on its behalf, to withdraw from "sale" and hold subject to further instructions the said lot of superphosphate fertilizer. Said "stop sale notice" is one of the "stop sale notices"

referred to and more fully described in paragraphs 5, 6 and 8 hereof.

12. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate possession of three certain lots of 20% superphosphate fertilizer consisting of 50 tons each, more or less. Said lots of fertilizer are part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

13. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-27003, entered into by the United States, through its Department of Agriculture, with Georgia Fertilizer Company, Valdosta, Georgia, for the furnishing to the United States by said Company of 500 tons of said fertilizer. By direction of the United States said lots were being shipped by rail from Valdosta, Georgia, consigned respectively to the Agricultural Conservation Associations of Walton County, Florida; Gadsden County, Florida; and Madison County, Florida, at their respective offices in DeFuniak Springs, Florida; Quincy, Florida; and Madison, Florida. Each of the three said County Agricultural Conservation Associations are instrumentalities and agencies of the United States acting on its behalf. Each of the three said shipments was under a Government Bill of Lading like that referred to and described in paragraph 10 hereof and each was described therein and referred to as "the public property hereinafter described."

[fol. 10] 14. On or about September 11, 1942, on information and belief, defendant Nathan Mayo, and/or the defendants sued herein as John Doe I, John Doe II, and John Doe III, purporting to act as inspectors of the Florida State Department of Agriculture, Inspection Bureau, under the purported authority of the Florida Commercial Fertilizer Law or other statutes the identity of which is unknown to plaintiff issued "stop sale notices" directing that the three said lots be withdrawn from "sale" and held subject to further instructions. These "stop sale notices" are among the "stop sale notices" referred to and more fully described in paragraphs 5, 6 and 8 hereof.

15. In the carrying out of the program of the United States time is of the essence, due to the fact that the planting

season in the State of Florida for the soil conserving crops with which the superphosphate fertilizer herein referred to is to be used will expire on or about October 15, 1942 and due to the acute necessity for obtaining nitrogen from the said crops to replace chemical nitrogen unavailable for fertilizer purposes due to its use in munitions required by the existing emergency. The threatened injury to the United States is imminent and irreparable, and the United States has no adequate remedy at law nor any remedy save injunction by this Honorable Court.

Wherefore, plaintiff demands:

1) A preliminary and permanent injunction as follows:

(a) Requiring defendants to vacate and set aside the "stop sale notices" and seizures hereinbefore referred to.

(b) Enjoining defendants from taking any steps to enforce such "stop sale notices" or seizures or to apply the provisions of the Florida Commercial Fertilizer Law or [fol. 11] other statutes, the identity of which is unknown to plaintiff, to the United States, any of its property or transactions, or any persons engaged on its behalf in carrying on its program for the distribution of fertilizer, or from threatening to take such steps, or from interfering with, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer.

2) A temporary restraining order to like effect.

3) Such other preliminary and final relief as may be proper.

Dated: Gainesville, Florida, September 17, 1942.

(S.) Francis M. Shea, Assistant Attorney General,
(S.) G. E. Hoffman, United States Attorney, Attorneys for Plaintiff.

Of counsel:

(S.) Sidney J. Kaplan, Special Assistant to the Attorney General. (S.) Martin Norr, Attorney, Department of Justice.

[fol. 12] *Duly sworn to by Fred S. Wallace. Jurat omitted in printing.*

[fol. 13] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DISTRICT OF COLUMBIA,
City of Washington, ss:

AFFIDAVIT OF JOSEPH L. ORR

Joseph L. Orr, being duly sworn, deposes and says:

1. Affiant is Acting Director of the Division of Special Programs of the Agricultural Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration of the Department of Agriculture, an executive department of the United States, which agency is carrying out the powers conferred upon the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h et seq.), as authorized under the act of February 29, 1936 (16 U. S. C. 590m).

(a) Congress has declared the policy of the Soil Conservation and Domestic Allotment Act to include (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment of the ratio between farm and non-farm purchasing power (16 U. S. C. 590h(a)).

(b) The Act also requires the Secretary to "encourage and provide for soil-conserving and soil-rebuilding prac-
[fol. 14] tices rather than the growing of soil-depleting crops" (16 U. S. C. 590h(b)) and payments or grants of aid are made for carrying out practices which the Secretary finds tend to effectuate the declared policy of Congress (16 U. S. C. 590h(d)).

(c) In carrying out the Soil Conservation and Domestic Allotment Act, the Secretary determines that certain practices will tend to effectuate the policy of Congress. Each year the Agricultural Adjustment Agency presents to all farmers a program designed to conserve and improve the

soil. Basically it is an offer to make payment at prescribed rates for carrying out specified practices that are deemed particularly important in this respect. Certain of these practices involve the application to the soil of superphosphate in connection with the planting of legumes and grasses. Interested farmers make known to local agricultural conservation associations their desire to participate. Instructions are issued to farmers who participate in the program that the stipulated practices must be followed if the farmer desires to obtain the benefits thereby accruing.

(d) In carrying out the agricultural conservation programs the Agricultural Adjustment Agency has formulated a conservation materials program under which, among other things, superphosphate to be used in carrying out this practice may be obtained by participating farmers in advance of performance. Subsequently, when performance payment is made, the value of the conservation materials received by the farmer (established by a so-called deduction rate) is deducted from the total payment due. In other words, conservation materials are supplied to participating farmers in lieu of payment which they would otherwise receive for carrying out practices eligible for payment under the agricultural conservation program.

(e) The program is open to landlords, tenant farmers and share croppers and payments are made to them on the basis of their participation. Many participants are not financially able to purchase the necessary materials for carrying out the plan if the supply were available. Since [fol. 15] the supply and the demand are dependent upon the Agricultural Adjustment Agency program, the soil-building and soil-conserving practices would not be carried out but for the activities of the United States. Sufficient superphosphate would not be available for the extensive program at present in operation were it not for the centralized purchase of large quantities through the U. S. Department of Agriculture and the consequent stimulation of production far in excess of normal.

(f) One of the prescribed practices is the planting of certain soil-conserving and soil-building crops. These crops, particularly legumes, are plowed under the next season and a commercial crop planted. Leguminous crops are peculiarly able to utilize superphosphate and obtain nitrogen

from the air and soil and to make the nitrogen available for future use. The availability of nitrogen fertilizer has an important bearing on the productivity of the land. The war has led to an acute shortage of chemical nitrogen which can only be replaced in this manner. The function of the United States in furnishing food to the Allies under the so-called Lend Lease Act, the increased domestic demand and the increasing demands of our own armed forces as well as the general shortage of farm labor, make it critically important that each acre of land devoted to raising food produce the maximum amount possible. The fertilizing practices which the Agricultural Adjustment Agency encourages tend to achieve such maximum production and prevent wasteful soil use.

(g) The superphosphate is purchased with funds appropriated by Congress in the Department of Agriculture Appropriation Act for the Fiscal Year ending June 30, 1943, approved July 22, 1942, which provides "that such amount [funds appropriated for carrying out this act] shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials or any soil terracing sur- [fol. 16] faces, and making grants thereof to agricultural producers to aid them in carrying out farming practices * * *"

2. In carrying out the said Soil Conservation and Domestic Allotment Act, superphosphate is purchased in various States in the United States and delivered both within the State of origin and out of the State of origin to agents of the Agricultural Adjustment Agency. Such superphosphate is then delivered by such agents of the Agricultural Adjustment Agency to farmers carrying out the practices provided for in the aforesaid Soil Conservation and Domestic Allotment Act.

3. The United States purchases superphosphate under contracts with manufacturers or other sellers of such materials, f. o. b. point of manufacture, and the materials are then shipped on a Government bill of lading to destinations specified by the Agricultural Adjustment Agency. The United States has entered into contracts with the Mutual Fertilizer Company, Savannah, Georgia (a true copy attached to and made a part hereof as Exhibit 1), and the Georgia Fertilizer Company, Valdosta, Georgia (a true

copy attached to and made a party hereof as Exhibit 2), and pursuant to the terms and conditions of such contracts, ordered shipments of superphosphate from these companies to be made to various destinations in the State of Florida on Government bill of lading. Four carloads of such material reached the destinations listed below:

1. Monticello, Jefferson County, Florida.
2. Madison, Madison County, Florida.
3. Defuniak Springs, Walton County, Florida.
4. Quincy, Gadsden County, Florida.

In Monticello, Florida, Franklin W. Smith, County Administrative Officer, Jefferson County Agricultural Conservation Association, was the consignee of such superphosphate.

4. Nathan Mayo, Commissioner of Agriculture, acting under the purported authority of the Florida commercial fertilizer law (Section 3808 and following of the Compiled Laws of Florida, as amended), issued a telegraphic stop [fol. 17] sale notice to Franklin W. Smith, County Administrative Officer, Jefferson County Agricultural Conservation Association, on September 10, 1942 (a true copy attached to and made a part hereof as Exhibit 3). A notice was served on the said Franklin W. Smith by Roy Hutchinson, Inspector, of the Inspection Bureau of the Department of Agriculture of the State of Florida, on September 11, 1942. Such notice (a true copy attached to and made a part hereof as Exhibit 4) by its terms requires the said Franklin W. Smith to withdraw from sale and hold subject to further instructions from the Commissioner of Agriculture 1083 bags of superphosphate weighing 100 pounds each for the reason that such superphosphate was not registered and not tagged in accordance with the Florida law. This notice applies to one freight car of fertilizer described as NYC (New York Central) No. 119958, consigned by Mutual Fertilizer Company to Franklin W. Smith, County Administrative Officer, Jefferson County Agricultural Conservation Association. This superphosphate was shipped on a Government bill of lading (a true copy attached to and made a part hereof as Exhibit 5).

5. Similar stop sale notices were served upon the consignees of the cars shipped to Madison, Defuniak Springs, and Quincy, Florida, by the said Nathan Mayo and his agents.

6. The said Nathan Mayo has threatened to stop the movement of all fertilizer shipped by the United States from other States into the State of Florida, and, according to the affiant's information and belief, has threatened the vendors of such materials to the United States with revocation of their registration in Florida.

7. The reason for the issuance of the stop sale notice referred to above according to affiant's information and belief is the failure of the United States to pay the inspection fee imposed by the laws of Florida and failure to obtain and attach tags to the containers of the fertilizer. Each con-
[fol. 18] tainer of superphosphate is presently labeled by the manufacturer in accordance with instructions from the Agricultural Adjustment Agency and such tag reveals the amount of available phosphoric acid in the fertilizer.

8. In Florida the planting season for certain soil conserving crops extends to approximately October 15 and the growing plants are plowed under the following spring. It is necessary that the superphosphate to be used on these crops be distributed in Florida prior to October 15 in order to permit the farmers to plant such soil conserving crops and thereby tend to effectuate the purpose of the program contemplated by the Soil Conservation and Domestic Allotment Act.

9. In order to carry out the program authorized and directed by the Congress of the United States, it is necessary that the fertilizer be delivered in the State of Florida free from interference by that State. Failure of the delivery of such fertilizer will cause irreparable harm and damage to the United States.

10. Enforcement of the stop sale notices issued by the said Nathan Mayo and his agents, and their other threatened action will prevent the effectuation of the program undertaken by the United States since such stop sale notices, unless the enforcement is restrained, will prevent the distribution of the fertilizer to participants in the program for use in the fall planting season in Florida during the present year.

(S.) Joseph L. Orr.

[fol. 19] *Duly sworn to by Joseph L. Orr. Jurat omitted in printing.*

(Here follow 2 photolithographs, side folios 20-21)

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EXHIBIT 1 to AFFIDAVIT (Exhibit 1)

U. S. Standard Form 36 (Revised)
Approved by the Secretary of the Treasury
January 17, 1940

USDA Invitation No. 1758-42. (F)

INVITATION, BID, AND ACCEPTANCE

Contract No. AIa 2696 3

(SHORT FORM CONTRACT)

U. S. Department of Agriculture (Department or establishment) Purchase, Sales and Traffic (Office or station)

Washington, D. C. (Address) April 24, 1942 (Date)

INVITATION

Sealed bids, in single copy subject to the conditions on the reverse hereof, will be received at this office until 2 o'clock p.m. EWT, May 15, 1942, and then publicly opened, for furnishing the following supplies, and/or services, for delivery at as specified herein

S. A. Snyder (Name) Chief of Division (Title)

ITEM No.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	AMOUNT Cents
	ALL CONDITIONS CONTAINED IN OR ATTACHED TO THIS ADVERTISEMENT WILL FORM A PART OF ANY AWARD MADE HEREUNDER.					
	18, 19 or 20% SUPERPHOSPHATE to be used as a conservation material by farmers participating in the Agricultural Conservation Program. It is estimated that 350,000 tons will be required for that purpose, but the right is reserved to award for a lesser or greater amount at the option of the Government. This material is to be delivered between July 1, 1942 and December 31, 1942. Awards made pursuant to this advertisement will be for definite quantities which bidders will be required to deliver and the Government required to place orders for.					
	The superphosphate shall be properly cured and shall be delivered in such physical condition as will permit its use by the farmers in the usual fertilizer distributing methods. The material is to be requisitioned in 100-pound bags, (new or used), the bags to be of such quality that the material can be shipped, unloaded, stored for at least six weeks, and further handled without loss of material or damage to container.					

BID

July 3, 1942 (Date)

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within 20 calendar days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item; delivered at the point(s) as specified and, unless otherwise specified within 3 calendar days after receipt of order, at a rate not to exceed 100 tons per day

Discounts will be allowed for payment as follows: ..... percent 10 calendar days; ..... percent 20 calendar days; 1 percent 30 calendar days.

Bidder Mutual Fertiliser Company Address Box 666

Savannah, Georgia

By Charles Ellis, Jr. (Signature of person authorized to sign this bid) Title Vice President and Secretary

ACCEPTANCE BY THE GOVERNMENT

July 15, 1942 (Date)

Accepted as to items numbered See Letter of Acceptance attached

Name J. M. Lockmane Title Acting Chief, Div. of Purchase, Sales & Traf

16—1000 (over)

20

714

CONDITIONS

1. The Government reserves the right to reject any or all bids, to waive any informality in bids and, unless otherwise specified by the Government or by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.

2. Time, in connection with discount offered, will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby: *Provided*, That if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefor shall be made at a proper reduction in price.

4. If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified, or any extension thereof, the Government may by written notice terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherwise, and the contractor and his sureties (if any) shall be liable to the Government for any excess cost occasioned the Government thereby: *Provided*, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes unless the contracting officer shall determine that the materials or supplies to be furnished under the subcontract are procurable in the open market, if the contractor shall notify the contracting officer in writing of the cause of any such delay, within 10 days from the beginning thereof, or within such further period as the contracting officer shall, with the approval of the head of the department or his duly authorized representative, prior to the date of final settlement of the contract, grant for the giving of such notice. The contracting officer shall then ascertain the facts and extent of delay, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal as to the facts of delay shall be final and conclusive, on the parties hereto. As used herein "head of the department" means the head or any assistant head of the executive department or independent establishment involved, and "his duly authorized representative" means any person authorized to act for him other than the contracting officer; and the term "contracting officer" shall include his duly appointed successor or his authorized representative.

5. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

6. Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of this bid, and made applicable directly upon the production, manufacture, or sale of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

7. Unless otherwise specified by the bidder, it is understood and agreed that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

INSTRUCTIONS TO BIDDERS

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will, upon request, be returned at the bidder's expense.
2. Prices should be stated in units of quantity specified, with packing included.
3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.
4. Envelops containing bids must be sealed and marked on the upper left-hand corner with the name and address of the bidder and the date and hour of opening, and addressed as instructed.
5. For further instructions read U. S. Standard Form 22 (Instructions to Bidders).

INSTRUCTIONS TO CONTRACTING OFFICERS

1. If shipment is made by Government bill of lading, observe consolidated classification requirements so as to secure the lowest rate applicable.
2. Although this form meets the requirements of a formal contract (R. S. 3744), if the execution of a formal contract with bond is contemplated U. S. Standard Forms 21 and 22 should be used.
3. If there is not sufficient space on the schedule to list all of the items, insert at the bottom of the schedule "Continued on ---------- sheets of U. S. Standard Form 36", and use that form also.
4. If it is definitely known that final acceptance cannot be accomplished within 10 or 20 days from date of delivery due to necessity for tests or analyses which cannot be accomplished within that time, delete, before issuance, the discount provision relating to 10 calendar days or to both 10 and 20 calendar days. The provision relating to discounts may also be deleted when funds do not become available so that payment may be made within such time limits.
5. If the contract is likely to involve patent liability, the article on patents as contained in U. S. Standard Form 23 should be used.
6. If the contract provides for liquidated damages, the above Condition No. 4 should be deleted and there should be substituted therefor the article entitled "Delays—Liquidated Damages", quoted in Paragraph 5 of the directions on page 6, U. S. Standard Form 32, modified as follows: Delete "In Article 1", line 2, and if no bond is required, delete "and his sureties", lines 6 and 10; add the last sentence (definitions) of the above Condition No. 4.

U. S. GOVERNMENT PRINTING OFFICE 16—1886—O

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[fol. 22] Bidding Schedule

18, 19 or 20% Superphosphate

See also Supplemental Bidding Schedule for Farmyard Delivery in the Northeast Region (New England, New York and Pennsylvania).

Bidder will state in connection with his offer the following:

1. Kind of material offered 19% P_2O_5. 18, 19 or 20 per cent.

2. Total quantity bidder offers in tons of 2,000 pounds bagged in 100-pound bags meeting specification requirements: 1500 tons.

3. Kind of bags to be used (new or used): new.

4. Quality and weight of bag bidder contemplates using if offer is accepted: paper 21" x 37" 3/40 1/50 Kraft.

5. (a) Price per ton for superphosphate FOB bidder's shipping point to be shipped on Government bills of lading for the account and at the risk of the Government for movement in interstate commerce to destinations in States other than the State of manufacture. $13.48.

(b) Bidder will state the additional charge per ton he will make to cover levies made by the State in which the superphosphate is manufactured for such of the material offered as will be delivered within the State of manufacture. $0.30.

(Award will be made on the basis of (a) only.)

6. Bidder's shipping point Savannah, Georgia.

7. The quantity of fertilizer offered under item 2 that will be made available for shipment subject to government orders in each calendar month specified by the bidder during the period from July 1, 1942, through December 31, 1942, shall be as indicated in the schedule below:

1942

July	... tons
August	500 tons
September	500 tons
October	500 tons
November	... tons
December	... tons

8. In the event the Government cannot place delivery orders in full during *nay* month that material is available as indicated by the bidder, the maximum quantity which bidder agrees to store if the quantities shown above are not currently ordered by the Government will be 500 tons.

9. Daily shipping capacity of bagged fertilizer via car or truck 500 tons.

Special Conditions

A. Unless otherwise specified by the bidder, the Govern- [fol. 23] ment reserves the right to accept all or part of the quantity offered. The privilege is extended to bidders to bid on amounts less than the entire quantity solicited.

B. The Government reserves the right to require delivery of the fertilizer at any time, subject to the daily shipping capacity, the cumulative monthly offerings and the maximum storage capacity stated in the bidding schedule.

C. Analyses of samples of fertilizer shipped under any award pursuant to this advertisement, taken either at shipping point or destination at the option of the Government will be made by chemists designated by the Government and according to the method prescribed by the American Association of Official Agricultural Chemists. The Government reserves the right to accept such analyses as final and conclusive.

D. Payment for superphosphate furnished will be at the ton price quoted. Material falling below the guaranteed P_2O_5 content will be rejected; provided, however, that material delivered which falls slightly below the guaranteed P_2O_5 content may be accepted if the exigencies of the program so require, in which event payment will be made on the basis of each full unit, (20 pounds) of the actual P_2O_5 content in a ton.

E. The printing on or attached to the bags used in shipping material under item 2 shall be specified by, or be subject to the approval of the Government.

F. Weekly shipping reports will be required to be furnished to the Government in such form as may be prescribed.

G. The Government shall be given the advantage under any award made pursuant to this advertisement of any

decline in price of superphosphate during the period covered by the contract. That is, the relation between the price on which the award is based and the quoted commercial price at the time of the award must be maintained with respect to any decline in the latter.

H. Awards under this advertisement will be based upon the following: (1) Cost per unit of available P_2O_5 in a ton f. o. b. bidder's shipping point plus transportation charges to representative railheads in the area to be served, (2) the availability and location of material, and (3) storage and shipping capacity specified by bidder.

I. Discounts for periods of less than 30 days will not be considered.

J. Bidders are requested to allow the Government at least 15 days in which to accept its bids.

The attached form AD-215 headed "General Conditions Applicable to Supply Contracts" is a part of this advertisement.

The particular attention of bidders is invited to the provision of an act approved October 14, 1940, making it unlawful, except as otherwise provided, to transport convict-made goods after October 14, 1941, in interstate commerce.

[fol. 24] The attention of all prospective bidders is also invited to the representations and stipulations pursuant to the Walsh-Healey Act, Public Act 846, 74th Congress, attached, which are applicable to all proposals for materials, supplies, articles, and equipment in any amount exceeding $10,000.00.

In accordance with the stipulations of Article 1b of the Special Conditions Applicable to all Proposals for Materials, Supplies, Articles or Equipment in any Amount Exceeding $10,000.00, the following wage determination has been made by the Secretary of Labor, and this stipulation as to minimum wages will be a part of any contract made as a result of this advertisement:

"The following wage determination has been made by the Secretary of Labor under the provisions of the Walsh-Healey Act, (49 Stat. 2036; 41 U. S. C. Sup. III 35):

"I Hereby Determine

"The prevailing minimum wage for employees engaged in the performance of contracts with agencies of the United

States Government, subject to the provisions of the Act of June 30, 1936, (49 Stat. 2036; 41 U. S. C. Sup. III 35); for the manufacture or supply of superphosphates and concentrated superphosphates; and for the manufacture or mixing of concentrated fertilizer from superphosphates, potash and ammoniates, to be the amount indicated for each of the following groups of States, whether arrived at upon a time or piece work basis:

"For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylavnia, Delaware (except Kent and Sussex Counties), Maryland (except the Eastern Shore consisting of Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and the District of Columbia, 40 cents an hour or $16.00 per week of forty hours.

"For the States of New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington, 50 cents an hour or $20.00 per week of forty hours.

"For Kent and Sussex Counties of Delaware, the Eastern Shore of Maryland (including Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), Virginia, Tennessee, and Kentucky, 30 cents an hour, or $12.00 per week of 40 hours.

"For the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas, 30 cents an hour or $12.00 per week of forty hours.

"This determination shall be effective and the minimum [fol. 25] wages hereby established shall apply to all such contracts, bids for which are solicited on or after April 19, 1940.

Dated: March 20, 1940.

(Signed) Frances Perkins, Secretary of Labor."

The sheets requesting farmyard delivery prices in the north east region have not been attached in every instance, however, bidders wishing to quote prices delivered to individual farmyards in this region may, upon application to Mr. S. A. Snyder, Chief, Division of Purchase, Sales, &

Traffic, Room 145—East Wing, Department of Agriculture, Washigton, D. C., obtain these sheets.

[fol. 26] Representations and Stipulations Pursuant to Walsh-Healey Act

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract; provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor: • • •

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and

safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representation- and stipulations of the contract as set forth herein may be withheld from any amount due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

[fol. 27] (g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.

Administrative Regulations

A bidder shall be deemed to be a "manufacturer" or a "regular dealer" if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Bidders Status

Bidder will state whether or not he is the manufacturer of the commodity bid on:

Yes: Yes. No: —.

If the bidder is not the manufacturer, but is bidding as a "regular dealer" he should enter below the name and address of the manufacturer of the material offered under the bid:

Name: —— ——. Address: ————.

Whether or not the bidder is the manufacturer, he will state the location of plant or plants where the material he intends to supply will be manufactured:

Name: Mutual Fertilizer Company. Address: Savannah, Georgia.

Certificate

I, hereby certify that, under the definitions contained in subsection (a) and (b) of the Regulations quoted above, I

am a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment covered by my proposal.

Mutual Fertilizer Co., Charles Ellis, Jr., Signature, Vice President and Secretary.

"Rulings and Interpretations", September 29, 1939, Walsh-Healey Public Contract Act may be procured from the Superintendent of Documents, Washington, D. C. for ten cents.

[fol. 28] AD 215 (Office of Budget and Finance) Approved, Office of Solicitor, April 10, 1940

United States Department of Agriculture

General Conditions Applicable to Supply Contracts

1. Preparation of Bids.—Before submitting proposal bidders should read carefully all conditions and instructions printed on the reverse side of Standard Form No. 33 and other papers included herewith. Signatures in ink are preferred. Bidders must affix sufficient postage to their bids.

2. Telegraphic Bids.—Telegraphic bids will not be considered unless specifically called for, but modifications by telegraph of bids already submitted immediately confirmed by mail will be considered if received prior to the time set for opening.

3. Corrections.—Erasures or alterations in bids must be authenticated or explained by the bidder.

4. New Goods.—Unless otherwise specified, all goods furnished must be fresh, new, and unused.

5. Departure from Specifications.—A bidder's failure to indicate intended deviations from specifications will be construed to mean that the goods offered are in full compliance therewith.

6. Alternative Bids.—Alternative bids will not be considered unless called for.

7. Trade Names.—Any reference to trade names or brands in this invitation is merely to indicate the type of goods desired and is not to be considered restricting offers to such trade names or brands.

8. Inspection.—Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications.

9. Certifications.—The attention of all bidders is invited to the following paragraphs as each bidder receiving award under this advertisement will be required to execute certificate (1) as well as certificates (3 and 4) in connection with the submission of his account on Government Standard Form or on his own original bill of sale or invoice. The required certification must be executed on the voucher or invoice. It will not be acceptable when executed separately and attached.

(1) I certify that the above bill is correct and just; that payment therefor has not been received; that except as otherwise noted all of the articles, materials, and supplies furnished under Purchase Order No. —, if unmanufactured articles, materials, and supplies, have been mined or produced in the United States, and if manufactured articles, materials, and supplies, they have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States; and that State or local sales taxes are not included in the amount billed.

Note.—Where the bidder has included State or local sales taxes in his offer and has not indicated his consent to a [fol. 29] deduction of the stated amount of such taxes included, he should strike out the reference to State or local taxes before executing the foregoing certificate.

(2) I certify that the United States received the benefit of reduction, if any, in the wage rate (s) in accordance with the stipulations under the contract.

(3) I certify that the stipulations required by law and/or under contract, etc., with respect to wages, rights, and hours of work of employees have been complied with.

(4) I certify that the United States received the benefit of decline, if any, in the market price (s) in accordance with the stipulations under the contract.

(5) I certify that the United States received the benefit of decrease, if any, in freight rates in accordance with the stipulations under the contract.

(6) I certify that tank-wagon (or barge, service stations, etc.) price, at date and point of delivery, is as stated herein.

10. Federal Specifications.—Copies of any Federal Specifications referred to herein may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. at a nominal cost.

11. Notice to Bidder—Taxes.—*Bidders are notified* that the Federal Government is exempt from the payment of all taxes imposed by the States or local authorities on commodities purchased by the Federal Government, where the tax is levied directly on the sale of the goods.* With respect to such taxes, however, as well as the Federal excise tax imposed by the Revenue Act of 1932, bidders may either include the amount of tax (in accordance with par. 6 of the reverse side of Standard Form 33) or exclude the amount of tax from the bid price. If any of the aforementioned taxes are excluded from the bid price, and the amount thereof is specifically shown by the bidder, a tax-exemption certificate will be issued. Bidders Are Informed That in Determining Awards—

(a) As to Federal taxes, all prices bid will be adjusted to a tax-included basis; and that

(b) As to State or local taxes, the net figure will be used where the bidder indicates that such taxes are included but that he is willing to accept deduction of such taxes from the quoted price with the issue of tax-exemption certificates; otherwise quoted prices will be used.

Bidder should list below all Federal, State, or local taxes which he has excluded from the bid price, or included with the option in the Government to exclude the tax in making payment. It is understood that all applicable taxes not dis-

closed are included without option to exclude the tax for purposes of making payment.

	Federal		State		Local	
Item No.	Included	Excluded	Included	Excluded	Included	Excluded

The special attention of bidders is drawn to the fact that, following the decision of the U. S. Supreme Court in State of Alabama v. King & Boozer 86 L. Ed. 1, it is now the rule that a vendor who sells to the United States is *not* exempt from the payment of a State sales tax upon the transaction unless the *legal incidence* of the tax is upon the vendee. See 21 Comptroller General's Decision, Page 733 (A-88689, January 31, 1942). Only those taxes should be reported on this sheet as to which the legal incidence falls on the United States as vendee. The ruling of the State as to the nature of its tax will control.

The undersigned warrants that the foregoing list includes all items of the bid which are subject to a Federal, State, or local tax with respect to which such tax is excluded from the bid price, or, if included, as to which the undersigned agrees to the deduction of such taxes from the bid price.

(Signed) Mutual Fertilizer Company, Bidder, by Charles Ellis, Jr., (Title) Vice President & Secretary.

[fol. 30] United States Department of Agriculture, Office of Budget and Finance, Washington, D. C.

Division of Purchase, Sales, and Traffic

May 13, 1942.

Addendum No. 1

Memorandum for Prospective Bidders

GENTLEMEN:

Reference is made to a request for bids (USDA No. 1758-42) sent out by this Division for 18, 19, and 20% Superphosphate, bids scheduled to be opened in this office at two p. m., EWT., May 15, 1942.

Pending clarification of the effect of the General Maximum Price Regulation issued under date of April 28, 1942 by the Office of Price Administration, the opening date of this invitation is delayed temporarily.

The exact date and hour of opening of these bids will be announced later when we are in a position to inform you

regarding the effect of the regulations. Such announcement will be made in sufficient time to allow all bidders to submit their bids or any revisions thereof.

Bids already submitted will be held unopened in this office. Such bids may be withdrawn, amended by letter or telegram, or new bids may be submitted.

Bidders must acknowledge receipt of this addendum.

Very truly yours, S. A. Snyder, Chief of Division.

[fol. 31] Office Budget & Finance, Division Purchase, Sales and Traffic

1222215(21) 021 1300-09 AAA

June 26, 1942.

Telegram

Addenum Number 2 to USDA 1758-42, 18, 19 or 20 per cent Superphosphate. Prospective Bidders Hereby Notified Bids will be Received Pursuant to Invitation Until 2PM, EWT, July 6, 1942. For the Information of All Bidders the Office of Price Administration has Advised that Maximum Price Regulation Number 135, Sub-Section 3 of Section 1367.39 is Being Amended to Include "Sales to the AAA." Amendment Will be Issued on June 30, to Be Effective on July 4. All Bidders Are Informed That the Following Paragraph Becomes a Part of the Invitation and Will Form a Part of Any Contract Made as a Result Thereof: "Bidder Certifies That the Prices Quoted in This Bid Do Not Exceed the Maximum Prices Established By Maximum Price Regulation Number 135 as Amended By the Price Administrator." Bids Already Submitted May Be Withdrawn, Amended By Letter or Telegram or New Bids May Be Submitted. Bidders Must Acknowledge Receipt of This Addendum.

S. A. Snyder, Department of Agriculture.

[fol. 32] Mutual Fertilizer Company, Savannah, Georgia

May 15, 1942.

Mr. S. A. Snyder, Office of Budget & Finance, U. S. Department of Agriculture, Washington, D. C.

Dear Mr. Snyder:

We wish to acknowledge receipt of Addendum No. 1 under date of May 13th relative to bids on Superphosphate.

We note that you will inform us regarding the effect of the price regulations on the figures to be submitted on this bid and do so in time for us to prepare figures before closing the bid.

We will thank you to send us this information as soon as possible, and we will look forward with interest to receiving same.

Very truly yours, by Charles Ellis, Jr., Vice Pres. & Sec.

[fol. 33] July 15, 1942.

Acceptance of Proposal

Als 26963—U. S. D. A. No. 1758-42 (r)

Mutual Fertilizer Company, Box 666, Savannah, Georgia.

Through Agricultural Adjustment Agency.

Your proposal of ——, dated July 3, 1942 for (Item a) furnishing 1,500 tons of 19% superphosphate, in new paper bags, at $13.48 per ton, less 1%—30 days, plus (Item b) 30¢ per ton where applicable, delivered at the rate of 500 tons per month during August, September and October, 1942, f. o. b. Savannah, Georgia, all in strict accordance with the specifications and conditions as set forth in the invitation and our telegraphic addendum of June 26, 1942, Agricultural Adjustment Agency, is hereby accepted.

Respectfully, J. M. Locknane, Acting Chief of Division.

(Here follows 2 photolithographs, side folios 34-35)

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EXHIBIT 2 to AFFIDAVIT (Exhibit 2)

U. S. Standard Form 35 (Revised)
Approved by the Secretary of the Treasury
January 17, 1940

Invitation No. 1758-42 (hh)

INVITATION, BID, AND ACCEPTANCE

Contract No. AIs 27003

(SHORT FORM CONTRACT)

U. S. Department of Agriculture (Department or establishment) Purchase, Sales and Traffic (Office or station)

Washington, D. C. (Address) April 24, 1942 (Date)

INVITATION

Sealed bids, in single copy subject to the conditions on the reverse hereof, will be received at this office until 2 o'clock p.m. EWT, May 15, 1942, and then publicly opened, for furnishing the following supplies, and/or services, for delivery at as specified herein

S. A. Snyder (Name) Chief of Division (Title)

ITEM No.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	AMOUNT Cents
	ALL CONDITIONS CONTAINED IN OR ATTACHED TO THIS ADVERTISEMENT WILL FORM A PART OF ANY AWARD MADE HEREUNDER. 18, 19 or 20% SUPERPHOSPHATE to be used as a conservation material by farmers participating in the Agricultural Conservation Program. It is estimated that 350,000 tons will be required for that purpose, but the right is reserved to award for a lesser or greater amount at the option of the Government. This material is to be delivered between July 1, 1942 and December 31, 1942. Awards made pursuant to this advertisement will be for definite quantities which bidders will be required to deliver and the Government required to place orders for. The superphosphate shall be properly cured and shall be delivered in such physical condition as will permit its use by the farmer in the usual fertilizer distributing methods. The material is to be requisitioned in 100-pound bags, (new or used), the bags to be of such quality that the material can be shipped, unloaded, stored for at least six weeks, and further handled without loss of material or damage to container.					

BID

May 14, 1942 (Date)

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within 15 calendar days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the point(s) as specified and, unless otherwise specified within 5 calendar days after receipt of order.

Discounts will be allowed for payment as follows: [redacted] percent 10 calendar days; [redacted] percent 20 calendar days; [redacted] percent 30 calendar days. None

Bidder Georgia Fertilizer Company Address Valdosta, Georgia

By R. L. Ming (Signature of person authorized to sign this bid) Title President and General Manager

ACCEPTANCE BY THE GOVERNMENT

May 16, 1942 (Date)

Accepted as to items numbered See Letter of Acceptance attached

Name J. H. Lochmann Title Acting Chief, Division of Purchase, Sales and Traffic

10—1939 (over)

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CONDITIONS

1. The Government reserves the right to reject any or all bids, to waive any informality in bids and, unless otherwise specified by the Government or by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.

2. Time, in connection with discount offered, will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby: *Provided*, That if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefor shall be made at a proper reduction in price.

4. If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified, or any extension thereof, the Government may by written notice terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherwise, and the contractor and his sureties (if any) shall be liable to the Government for any excess cost occasioned the Government thereby: *Provided*, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor due to such causes unless the contracting officer shall determine that the materials or supplies to be furnished under the subcontract are procurable in the open market, if the contractor shall notify the contracting officer in writing of the causes of any such delay, within 10 days from the beginning thereof, or within such further period as the contracting officer shall, with the approval of the head of the department or his duly authorized representative, prior to the date of final settlement of the contract, grant for the giving of such notice. The contracting officer shall then ascertain the facts and extent of delay, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days by the contractor to the head of the department concerned or his duly authorized representative, whose decision on such appeal as to the facts of delay shall be final and conclusive, on the parties hereto. As used herein "head of the department" means the head or any assistant head of the executive department or independent establishment involved, and "his duly authorized representative" means any person authorized to act for him other than the contracting officer; and the term "contracting officer" shall include his duly appointed successor or his authorized representative.

5. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

6. Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of this bid, and made applicable directly upon the production, manufacture, or sale of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

7. Unless otherwise specified by the bidder, it is understood and agreed that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

INSTRUCTIONS TO BIDDERS

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will, upon request, be returned at the bidder's expense.

2. Prices should be stated in units of quantity specified, with packing included.

3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.

4. Envelope containing bids must be sealed and marked on the upper left-hand corner with the name and address of the bidder and the date and hour of opening, and addressed as instructed.

5. For further instructions read U. S. Standard Form 22 (Instructions to Bidders).

INSTRUCTIONS TO CONTRACTING OFFICERS

1. If shipment is made by Government bill of lading, observe consolidated classification requirements so as to secure the lowest rate applicable.

2. Although this form meets the requirements of a formal contract (R. S. 3744), if the execution of a formal contract with bond is contemplated U. S. Standard Forms 31 and 32 should be used.

3. If there is not sufficient space on the schedule to list all of the items, insert at the bottom of the schedule "Continued on ---------- sheets of U. S. Standard Form 36", and use that form also.

4. If it is definitely known that final acceptance cannot be accomplished within 10 or 20 days from date of delivery due to necessity for tests or analyses which cannot be accomplished within that time, delete, before issuance, the discount provision relating to 10 calendar days or to both 10 and 20 calendar days. The provision relating to discounts may also be deleted when funds do not become available so that payment may be made within such time limits.

5. If the contract is likely to involve patent liability, the article on patents as contained in U. S. Standard Form 32 should be used.

6. If the contract provides for liquidated damages, the above Condition No. 4 should be deleted and there should be substituted therefor the article entitled "Delays—Liquidated Damages", quoted in Paragraph 6 of the directions on page 6, U. S. Standard Form 32, modified as follows: Delete "In Article 1", line 2, and if no bond is required, delete "and his sureties", lines 6 and 10; add the last sentence (definitions) of the above Condition No. 4.

U. S. GOVERNMENT PRINTING OFFICE 16—1205—0

2811

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[fol. 36] USDA 1758-42.

Bidding Schedule

18, 19 or 20% Superphosphate

See Also Supplemental Bidding Schedule for Farmyard Delivery in the Northeast Region (New England, New York and Pennsylvania).

Bidder will state in connection with his offer the following:

1. Kind of material offered 19% Superphosphate.
18, 19 or 20 percent

2. Total quantity bidder offers in tons of 2,000 pounds bagged in 100-pound bags meeting specification requirements: 3,000 tons.

3. Kind of bags to be used (new or used): new paper.

4. Quality and weight of bag bidder contemplates using if offer is accepted: 21 x 36 4-ply paper.

5. (a) Price per ton for superphosphate FOB bidder's shipping point to be shipped on Government bills of lading for the account and at the risk of the Government for movement in interstate commerce to destinations in States other than the State of manufacture: $14.18.

(b) Bidder will state the additional charge per ton he will make to cover levies made by the State in which the superphosphate is manufactured for such of the material offered as will be delivered within the State of manufacture.

No deliveries to be made out of the State of Georgia.

Waived by letter of August 9, 1942. (Award will be made on the basis of (a) only.)

6. Bidder's shipping point: Valdosta, Georgia.

7. The quantity of fertilizer offered under item 2 that will be made available for shipment subject to Government orders in each calendar month specified by the bidder during the period from July 1, 1942, through December 31, 1942, shall be as indicated in the schedule below:

1942

July	500 tons
August	500 tons

1942

September	500 tons
October	500 tons
November	500 tons
December	500 tons

[fol. 37] 8. In the event the Government cannot place delivery orders in full during *nay* month that material is available as indicated by the bidder, the maximum quantity which bidder agrees to store if the quantities shown above are not currently ordered by the Government will be 1,000 tons.

9. Daily shipping capacity of bagged fertilizer via car or truck 1,000 tons.

Special Conditions

A. Unless otherwise specified by the bidder, the Government reserves the right to accept all or part of the quantity offered. The privilege is extended to bidders to bid on amounts less than the entire quantity solicited.

B. The Government reserves the right to require delivery of the fertilizer at any time, subject to the daily shipping capacity, the cumulative monthly offerings and the maximum storage capacity stated in the bidding schedule.

C. Analyses of samples of fertilizer shipped under any award pursuant to this advertisement, taken either at shipping point or destination at the option of the Government will be made by chemists designated by the Government and according to the method prescribed by the American Association of Official Agricultural Chemists. The Government reserves the right to accept such analyses as final and conclusive.

D. Payment for superphosphate furnished will be at the ton price quoted. Material falling below the guaranteed P_2O_5 content will be rejected; provided, however, that material delivered which falls slightly below the guaranteed P_2O_5 content may be accepted if the exigencies of the program so require, in which event payment will be made on the basis of each full unit, (20 pounds) of the actual P_2O_5 content in a ton.

E. The printing on or attached to the bags used in shipping material under item 2 shall be specified by, or be subject to the approval of the Government.

F. Weekly shipping reports will be required to be furnished to the Government in such form as may be prescribed.

G. The Government shall be given the advantage under any award made pursuant to this advertisement of any decline in price of superphosphate during the period covered by the contract. That is, the relation between the price on which the award is based and the quoted commercial price at the time of the award must be maintained with respect to any decline in the latter.

H. Awards under this advertisement will be based upon the following: (1) Cost per unit of available P_2O_5 in a ton f. o. b. bidder's shipping point plus transportation charges to representative railheads in the area to be served, (2) the availability and location of material, and (3) storage and shipping capacity specified by bidder.

I. Discounts for periods of less than 30 days will not be considered.

J. Bidders are requested to allow the Government at least 15 days in which to accept its bids.

[fol. 38] The attached form AD-215 headed "General Conditions Applicable to Supply Contracts" is a part of this advertisement.

The Particular Attention of Bidders is Invited to the Provision of an Act Approved October 14, 1940, Making it Unlawful, Except as Otherwise Provided, to Transport Convict-Made Goods After October 14, 1941 in Interstate Commerce.

The attention of all prospective bidders is also invited to the representations and stipulations pursuant to the Walsh-Healey Act, Public Act 846, 74th Congress, attached, which are applicable to all proposals for materials, supplies, articles, and equipment in any amount exceeding $10,000.00.

In accordance with the stipulations of Article 1b of the Special Conditions Applicable to all Proposals for Materials, Supplies, Articles or Equipment in any Amount Exceeding $10,000.00, the following wage determination has been made by the Secretary of Labor, and this stipulation as to minimum wages will be a part of any contract made as a result of this advertisement:

"The following wage determination has been made by the Secretary of Labor under the provisions of the Walsh-Healey Act, (49 Stat. 2036; 41 U. S. C. Sup. III 35):

"I Hereby Determine

"The prevailing minimum wage for employees engaged in the performance of contracts with agencies of the United States Government, subject to the provisions of the Act of June 30, 1936, (49 Stat. 2036; 41 U. S. C. Sup. III 36); for the manufacture or supply of superphosphates and concentrated superphosphates; and for the manufacture or mixing of concentrated fertilizer from superphosphates, potash and ammoniates, to be the amount indicated for each of the following groups of States, whether arrived at upon a time or piece work basis:

"For the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware (except Kent and Sussex Counties), Maryland (except the Eastern Shore consisting of Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), West Virginia, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and the District of Columbia, 40 cents an hour or $16.00 per week of forty hours.

"For the States of New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington, 50 cents an hour or $20.00 per week of forty hours.

"For Kent and Sussex Counties of Delaware, the Eastern Shore of Maryland (including Cecil, Kent, Queen Annes, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties), Virginia, Tennessee, and Kentucky, 30 cents an hour, or $12.00 per week of 40 hours.

"For the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas, 30 cents an hour or $12.00 per week of forty hours.

"This determination shall be effective and the minimum wages hereby established shall apply to all such contracts, bids for which are solicited on or after April 19, 1940.

Dated: March 20, 1940.

(Signed) Frances Perkins, Secretary of Labor."

[fol. 39] The Sheets Requesting Farmyard Delivery Prices in the North East Region Have Not Been Attached in Every Instance, However, Bidders Wishing to Quote Prices Delivered to Individual Farmyards in This Region May, Upon Application to Mr. S. A. Snyder, Chief, Division of Purchase, Sales, & Traffic, Room 145—East Wing, Department of Agriculture, Washington, D. C., Obtain These Sheets.

[fol. 40] *Representations and Stipulations Pursuant to Walsh-Healey Act*

(a) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract; provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been subject matter of a determination by the Secretary of Labor.

(c) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and in addition, the agency of the United States entering into the contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amount due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: provided, that no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

[fol. 41] (g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.

Administrative Regulations

A bidder shall be deemed to be a "manufacturer" or a "regular dealer" if he falls within one of the following categories:

(a) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

Bidders Status

Bidder will state whether or not he is the manufacturer of the commodity bid on:

X	
Yes	No

If the bidder is not the manufacturer, but is bidding as a "regular dealer" he should enter below the name and address of the manufacturer of the material offered under the bid:

Name	Address

Whether or not the bidder is the manufacturer, he will state the location of plant or plants where the material he intends to supply will be manufactured:

Georgia Fertilizer Co.	Valdosta, Georgia
Name	Address

Certificate

I, hereby certify that, under the definitions contained in subsection (a) and (b) of the Regulations quoted above, I am a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment covered by my proposal.

Georgia Fertilizer Co., R. L. King (Signature), President and Gen. Manager.

"Rulings and Interpretations", September 29, 1939, Walsh-Healey Public Contract Act may be procured from the Superintendent of Documents, Washington, D. C., for ten cents.

[fol.42] AD 215 (Office of Budget and Finance), Approved Office of Solicitor, April 10, 1940.

UNITED STATES DEPARTMENT OF AGRICULTURE

General Conditions Applicable to Supply Contracts

1. Preparation of Bids.—Before submitting proposal bidders should read carefully all conditions and instructions printed on the reverse side of Standard Form No. 33 and other papers included herewith. Signatures in ink are preferred. Bidders must affix sufficient postage to their bids.

2. Telegraphic Bids.—Telegraphic bids will not be considered unless specifically called for, but modifications by telegraph of bids already submitted immediately confirmed by mail will be considered if received prior to the time set for opening.

3. Corrections.—Erasures or alterations in bids must be authenticated or explained by the bidder.

4. New Goods.—Unless otherwise specified, all goods furnished must be fresh, new, and unused.

5. Departure from Specifications.—A bidder's failure to indicate intended deviations from specifications will be construed to mean that the goods offered are in full compliance therewith.

6. Alternative Bids.—Alternative bids will not be considered unless called for.

7. Trade Names.—Any reference to trade names or brands in this invitation is merely to indicate the type of goods desired and is not to be considered restricting offers to such trade names or brands.

8. Inspection.—Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications.

9. Certifications.—The attention of all bidders is invited to the following paragraphs as each bidder receiving award under this advertisement will be required to execute certificate (1) as well as certificates (3 and 4) in connection with the submission of his account on Government Standard Form or on his own original bill of sale or invoice. The required certification must be executed on the voucher or invoice. It will not be acceptable when executed separately and attached.

(1) I certify that the above bill is correct and just; that payment therefor has not been received; that except as otherwise noted all of the articles, materials, and supplies furnished under Purchase Order No. —, if unmanufactured articles, materials, and supplies, have been mined or produced in the United States, and if manufactured articles, materials, and supplies, they have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States; and that State or local sales taxes are not included in the amount billed.

Note.—Where the bidder has included State or local sales taxes in his offer and has not indicated his consent to a deduction of the stated

[fol. 43]

amount of such taxes included, he should strike out the reference to State or local taxes before executing the foregoing certificate.

(2) I certify that the United States received the benefit of reduction, if any, in the wage rate(s) in accordance with the stipulations under the contract.

(3) I certify that the stipulations required by law and/or under contract, etc., with respect to wages, rights, and hours of work of employees have been complied with.

(4) I certify that the United States received the benefit of decline, if any, in the market price(s) in accordance with the stipulations under the contract.

(5) I certify that the United States received the benefit of decrease, if any, in freight rates in accordance with the stipulations under the contract.

(6) I certify that tank-wagon (or barge, service stations, etc.) price, at date and point of delivery, is as stated herein.

10. Federal Specifications.—Copies of any Federal Specifications referred to herein may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., at a nominal cost.

(2)

11. Notice to Bidder.—Taxes.—Bidders are notified that the Federal Government is exempt from the payment of all taxes imposed by the States or local authorities on commodities purchased by the Federal Government, where the tax is levied directly on the sale of the goods.* With respect to such taxes, however, as well as the Federal excise tax imposed by the Revenue Act of 1932, bidders may either include the amount of tax (in accordance with Par. 6 of the reverse side of Standard Form 33) or exclude the amount of tax from the bid price. If any of the aforementioned taxes are excluded from the bid price, and the amount thereof is specifically shown by the bidder, a tax-exemption certificate will be issued. Bidders are Informed That in Determining Awards—

(a) As to Federal taxes, all prices bid will be adjusted to a tax-included basis; and that

(b) As to State or local taxes, the net figure will be used where the bidder indicates that such taxes are included but that he is willing to accept deduction of such taxes from the quoted price with the issue of tax-exemption certificates; otherwise quoted prices will be used.

Bidder should list below all federal, State or local taxes which he has excluded from the bid price, or included with the option in the Government to exclude the tax in making payment. It is understood that all applicable taxes not disclosed are included without option to exclude the tax for purposes of making payment.

	Federal		State		Local	
Item No.	Included	Excluded	Included	Excluded	Included	Excluded
	All taxes excluded		All taxes excluded		All taxes excluded	

The special attention of bidders is drawn to the fact that, following the decision of the U. S. Supreme Court in State of Alabama v. King & Boozer, 86 L. Ed. 1, it is now the rule that a vendor who sells to the United States is *not* exempt from the payment of a State sales tax upon the transaction unless the *legal incidence* of the tax is upon the vendee. See 21 Comptroller General's Decision, Page 733 (A-88689, January 31, 1942). Only those taxes should be reported on this sheet as to which the legal incidence falls on the

United States as vendee. The ruling of the State as to the nature of its tax will control.

The undersigned warrants that the foregoing list includes all items of the bid which are subject to a Federal, State, or local tax with respect to which such tax is excluded from the bid price, or, if included, as to which the undersigned agrees to the deduction of such taxes from the bid price.

(Signed) Georgia Fertilizer Company, Bidder, by R. L. King, (title) President and General Manager.

[fol. 44] United States Department of Agriculture

Office of Budget and Finance

Washington, D. C.

Division of Purchase, Sales, and Traffic.

May 13, 1942.

Addendum No. 1

Memorandum for Prospective Bidders

GENTLEMEN:

Reference is made to a request for bids (U. S. D. A. No. 1758-42) sent out by this Division for 18, 19, and 20% Superphosphate, bids scheduled to be opened in this office at two p. m., EWT., May 15, 1942.

Pending clarification of the effect of the General Maximum Price Regulation issued under date of April 28, 1942 by the Office of Price Administration, the opening date of this invitation is delayed temporarily.

The exact date and hour of opening of these bids will be announced later when we are in a position to inform you regarding the effect of the regulations. Such announcement will be made in sufficient time to allow all bidders to submit their bids or any revisions thereof.

Bids already submitted will be held unopened in this office. Such bids may be withdrawn, amended by letter or telegram, or new bids may be submitted.

Bidders must acknowledge receipt of this addendum.

Very truly yours, S. A. Snyder, Chief of Division.

[fol. 45] Office Budget & Finance Division Purchase, Sales and Traffic

1222215(21) 021 1300-09 AAA

June 26, 1942

Telegram

Addendum Number 2 to USDA 1758-42, 18, 19 or 20 per cent superphosphate. Prospective bidders hereby notified bids will be received pursuant to invitation until 2 PM, EWT, July 6, 1942. For the information of all bidders the Office of Price Administration has advised that maximum Price Regulation Number 135, Sub-section 3 of Section 1367.39 is being amended to include "Sales to the AAA." Amendment will be issued on June 30, to be effective on July 4. All bidders are informed that the following paragraph becomes a part of the invitation and will form a part of any contract made as a result thereof: "Bidder certifies that the prices quoted in this bid do not exceed the maximum prices established by Maximum Price Regulation Number 135 as amended by the Price Administrator." Bids already submitted may be withdrawn, amended by letter or telegram or new bids may be submitted. Bidders must acknowledge receipt of this addendum.

S A Snyder Department of Agriculture

[fol. 46] Georgia Fertilizer Company, Valdosta, Georgia

July 4, 1942.

Mr. S. A. Snyder, U. S. Department of Agriculture, Washington, D. C.

18, 19 or 20% Superphosphate. Re: Addendum No. 2 to USDA 1758-42

Dear Sir:

Answering your telegram of June 27:

We wish to amend our bid on 3,000 tons of 19% Superphosphate by withdrawing our bid on 19% Superphosphate, and herewith submitting our bid on 3,000 tons of 20% Superphosphate, for the same monthly deliveries (in paper bags 100-lb. size):

Our bid on this 3,000 tons of 20% Superphosphate is $16.52 per ton of 2,000 lbs., in 100-lb. paper bags (4 ply

multi-wall) f. o. b. cars our plant at Valdosta, Ga., all terms and conditions as contained in our original bid.

We await with interest receipt of your further advice.

Very truly yours, Georgia Fertilizer Company, By R. L. King, President & General Manager.

[fol. 47] Telegram Received
POW75 49/48 DL

Valdosta Ga. 1245P July 15, 1942

S A Snyder Chief Divn of Purchase Sales and Traffic US Dept of Agri Washington DC

Desire revise our bid USDA 1758-42 twenty percent superphosphate in hundred pound four ply multiwall paper bags to five thousand tons equal monthly deliveries July through December 1942 at price fifteen fifty per ton fob cars our plant Valdosta at terms and conditions as contained in our original bid.

Georgia Fertilizer Co.

330P

Georgia Fertilizer Company Valdosta, Georgia

July 15, 1942.

Mr. S. A. Snyder, Chief Division of Purchase, Sales & Traffic, United States Department of Agriculture, Washington, D. C.

Dear Mr. Snyder:

Confirming our telegraphic quotation of this morning, with reference USDA 1758-42.

We desire to revise our bid to cover 5,000 tons of 20% Superphosphate in 100# 4-ply multiwall paper bags for equal monthly deliveries, July through December 1942, at a price of $15.50 per ton fob cars our plant, same terms and conditions as contained in our original bid.

We have revised our price downward, hoping to receive some of this tonnage; and await with interest receipt of your further advice.

Very truly yours, Georgia Fertilizer Company, By R. L. King, President and General Manager.

[fol. 48] Telegram Received
WPO72 53/52 DL

Valdosta, Ga. 104P Jul 20 1942

S A Snyder Chief Division of Purchase Sales and Traffic
United States Dept of Agriculture Washington DC

Referring our telegram July fifteenth wish to correct our revised bid on USDA 1758-42 twenty percent superphosphate in one hundred pound paper bags to fifteen dollars per ton fob cars our plant Valdosta. Same terms and conditions as our original bid on five thousand tons equal monthly deliveries July through December 1942

Georgia Fertilizer Co

520P
USDA 1758-42
Also 1942

[fol. 49] July 21, 1942.

Acceptance of Proposal

als 27003—U.S.D.A. No. 1758-42 (hh)

Georgia Fertilizer Company, Valdosta, Georgia:

Through Agricultural Adjustment Agency

Your proposal of -15.00 per ton dated May 14, 1942 letter of July 4, and telegrams of July 15 and 20, 1942 for furnishing 5,000 tons of 20% superphosphate, in new paper bags, delivered at the rate specified during the period from date of award through December 31, 1942, f. o. b. Valdosta, Georgia, all in strict accordance with the specifications and conditions as set forth in the invitation and our telegraphic addendum of June 26, 1942.

xxxxxxx Agricultural Adjustment Agency is hereby accepted.

Respectfully, J. M. Locknane, Acting Chief of Division.

[fol. 50] EXHIBIT 3 TO AFFIDAVIT

Copy

Western Union Telegram

September 10, 1942.

Franklin W. Smith, Administrative Officer,
Jefferson County Agricultural Association,
Monticello, Florida:

This is Your Official Notice That Car of Superphosphate Consigned to You by Mutual Fertilizer Company, Savannah, Georgia, is under Legal Stop Sale Notice as Provided by Florida Fertilizer Law Account Not Being Registered and Tagged. Am Wiring Manufacturer to Arrange Registration and Tagging Immediately so Goods May be Released.

Nathan Mayo, Commissioner of Agriculture.

Charge to Inspection Bureau.

Rush.

[fol. 51] EXHIBIT 4 TO AFFIDAVIT

Copy

Stop Sale Notice

Florida State Department of Agriculture, Inspection Bureau

Sept. 11, 1942.

To Franklin W. Smith—County Adm. Officer, Jefferson County ACA.

(Name of Merchant in Whose Possession Goods Found)

Monticello

Address

You are hereby notified to withdraw from sale and hold subject to further instructions from the Commissioner of

Agriculture the goods listed below. This order issued under authority of Law Checked Below:

Florida Commercial Fertilizer Law	( )
Florida Commercial Feed Law	( )
Florida Food, Drug and Cosmetic Law	( )
Florida Egg Law	( )
Florida Poultry Law	( )
Florida Gasoline Inspection Law	( )
Florida Insecticide and Fungicide Law	( )
Florida Seed Law	( )

(Name of Article)	(Brand Name)	(No. of Packages)
Superphosphate 19%		1083 Bags

(Name of Article)	(Brand Name)	(No. of Packages)
Weighing 100 Each.		

(Name of Article)	(Brand Name)	(No. of Packages)

(Name and Address of Distributor)

(Name and Address of Manufacturer)

Reason for Withdrawal—Not registered—Not tagged.

Name of Inspector: Roy Hutchinson.

(Here follow 2 photolithographs, side folios 52-53)

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EXHIBIT 5 to AFFIDAVIT

(Exhibit 5)
A 2621276

Standard Form No. 1058
Prescribed by Comptroller General U. S.
August 24, 1936

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
Agricultural Adjustment Administration
SOUTHERN [redacted] DIVISION

GOVERNMENT BILL OF LADING

ORIGINAL

To _____
(Department or Establishment and Bureau or Service)

SEE REVERSE HEREOF

_____
(Appropriation chargeable)

Program Operations Section
(Issuing office)

E.L.Deal Chief
(Name and title of issuing officer)

Sept. 5, 1942
(Date issued)

Received from U.S. Gov't. at Savannah, Ga.
(Consignor)

by the S.A.L.
(Name of transportation company) the public property hereinafter described, in apparent good order and condition (contents and value unknown), to be forwarded subject to conditions stated on the reverse hereof,

from Savannah, Georgia (Shipping point) to Monticello, Florida (Destination)

by the said company and connecting lines, there to be delivered in like good order and condition to Jefferson County, A.C.A. (Consignee)

Notify Franklin W. Smith Box 587, Monticello, Florida

via Ship by cheapest route - Del. Carrier S.A.L.
(Route journey only when some substantial interest of the Government is subserved thereby)

MARKS	NUMBERS ON PACKAGES	NUMBER AND KIND OF PACKAGES	DESCRIPTION OF ARTICLES (Observe strictly carrier's freight classification. Avoid trade or technical names)	WEIGHTS*
Aaa-218937			19% Superphosphate	54.15 tons

When signed by originating carrier's agent, forward to consignee.

Pick-up service at origin was / was not by the Government.

_____
(Signature of Consignor)

† Size car ordered..... ft. Size car furnished.....ft. Date furnished..... Initials..... Car No.....

TARIFF AUTHORITY
(To be filled in by general office rendering account)

AUTHORITY FOR SHIPMENT

S.A.L.
(Name of transportation company)

_____, 19..... Per.....
(Date) (Agent)

CERTIFICATE OF ISSUING OFFICER
(To be filled out when this bill of lading is issued for use by contractor in making shipment)

Contract No. Als-26965, or Purchase Order No. _____, dated 7/15/42, 19....

Savannah, Ga. (F. O. B. point named in contract) E.L.Deal (Issuing officer)

(CARRIER'S RIGHTS TO SHIPPING CHARGES NOT AFFECTED BY FACTS SET OUT IN THIS CERTIFICATE)

CONSIGNEE'S CERTIFICATE OF DELIVERY

I have this day received from _____
(Name of transportation company)

at _____ (Actual point of delivery by carrier) the public property described in this bill of lading, in apparent good order and condition, except as noted on the reverse hereof. Delivery service at destination was / was not by the Government.

Weight _____ (In words) pounds. _____ (In figures)

_____ (Consignee) _____ (Date), 19....

*Show also cubic measurement for shipments via ocean carrier in cases where required. † Furnish this information in case of carload shipments only.

INSTRUCTIONS FOR BILLING: 1. Consignee should pay no charges on this shipment. 2. Charges to be billed to the Department or Establishment and Bureau or Service named above on authorized Government voucher form, attaching this bill of lading as supporting paper.

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ADMINISTRATIVE DIRECTIONS

1. Government property will be transported on the prescribed form of Government bill of lading (original, memorandum, and shipping order), which will be identified by serial numbers.
2. Through bills of lading will be issued in all instances between initial and ultimate points, except when rates more advantageous to the Government may be otherwise secured.
3. When shipments are made under contract or special rates, notation of such fact should appear on the face of bills of lading.
4. Officers charged with the duty of providing or securing Government transportation should familiarize themselves with land-grant railroads in order that shipments may be made at the lowest rates available to the Government by the use of such lines, or lines equalizing rates therewith.
5. Public property may be delivered by any Government officer or agent to the Quartermaster Corps, U. S. Army, which will ship the same under its regulations. (23 Stat. 111.)
6. Bills of lading must describe shipments of articles by their commercial names, giving separately such weights, dimensions, and manner of packing as may be necessary to ascertain classifications and rates and to [illegible] able recovery in case of loss or damage.
7. If the number of articles to be shipped be too great for the blank [illegible] original, memorandum, and shipping order), extra sheets of the prescribed form should be used, and so attached and designated as to form but one bill of lading, under one number.
8. A voucher when submitted for settlement shall cover charges to one office or service only. The name of the office is inserted at the top of the bill of lading. Correspondence regarding transportation accounts shall be addressed to the particular office or service and reference made to the serial numbers of the Government bills of lading included in the company's bill.

REPORT OF LOSS, DAMAGE, OR SHRINKAGE

Notice is hereby given the carrier to whom this bill of lading is surrendered that the shipment was received in condition shown below and that claim is made for the value of such loss, damage, or shrinkage, as indicated.

Explanation regarding loss, damage, or shrinkage to be made by consignee, who will state all the facts available concerning the nature or extent of the loss, damage, or shrinkage, and how it occurred.

The within shipment was received with the following loss, damage, or shrinkage:

Description.....

.....

.....

.....

.....

.....

Weight of such articles.....pounds.

Invoice value or cost of repairs, $.....

I certify that the facts noted above are correct.

.....
Consignee.

By.....

GENERAL CONDITIONS AND INSTRUCTIONS

CONDITIONS

It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

1. Prepayment of charges shall in no case be demanded by carrier, nor shall collection be made from consignee. On presentation to the office indicated on the face hereof of this bill of lading, properly accomplished, attached to freight voucher prepared on the authorized Government form, payment will be made to the last carrier, unless otherwise specifically stipulated.
2. Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.
3. Shipment made upon this bill of lading shall take no higher rate than would be charged had the shipment been made upon the uniform straight bill of lading or uniform express receipt.
4. No charge shall be made by any carrier for the execution and presentation of bills of lading in manner and form as provided by the instructions hereon.
5. This shipment is made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate is available, unless otherwise indicated on the face hereof.
6. Receipt of the shipment is made subject to the "Report of Loss, Damage, or Shrinkage" noted hereon.
7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carriers or to period within which claim thereafter shall be made or suit instituted.

INSTRUCTIONS

1. Erasures, interlineations, or alterations in bills of lading must be authenticated and explained by the person making them.
2. Shipping order, original bill of lading, and memorandum bill of lading should be used in making a shipment. Only one original bill of lading will be issued for a single shipment. The shipping order should be furnished the initial carrier. The original bill of lading and memorandum copies should be signed by the agent of the receiving carrier, returned to the consignor, and the original promptly mailed to the consignee. The consignee on receipt of the shipment will sign the consignee's certificate on the original bill of lading and surrender the bill of lading to the last carrier. The bill of lading then becomes the evidence upon which settlement for the service will be made. Memorandum copies of bills of lading may be used as administrative officers direct.
3. In the absence of the consignee, or on his failure to receipt, the person receipting will certify that he is duly authorized to do so, reciting such authority.
4. In no case will a second bill of lading be issued for a shipment, nor will a bill of lading be issued after the transportation has been performed. In case the bill of lading has been lost or destroyed, the carrier shall be furnished by the consignee with a "Certificate in Lieu of Lost Bill of Lading," on the standard form prescribed therefor which, when finally consummated by acknowledgment of the "Certificate and Waiver by Transportation Company," shall accompany the bill for services submitted by the carrier to the officer charged with the settlement of the account. Should the original bill of lading be located after settlement has been made on the certificate, it will be forwarded to the administrative office of the department concerned for transmittal to the General Accounting Office.
5. To insure prompt delivery of property, in the absence of the bill of lading, the consignee should give to the carrier a "Temporary Receipt," executed on the prescribed form, for the property actually delivered. On the recovery of the bill of lading, or when the certificate provided for above shall have been given, a statement will be indorsed on said bill of lading or certificate of the fact of the delivery as per said temporary receipt, and the said temporary receipt will be indorsed with reference to the bill of lading or certificate sufficient to identify the same, and both papers attached and forwarded with the claim for payment thereon.
6. In case of loss or damage to property while in the possession of the carrier, such loss or damage shall, when practicable, be noted on the bill of lading or certificate in lieu thereof, as the case may be, before its accomplishment. All practicable steps shall be taken at that time to determine the loss or damage and the liability therefor, and to collect and transmit to the proper officer, without delay, all evidence as to the same. Should the loss or damage not be discovered until after the bill of lading or certificate has been accomplished, the proper officer shall be notified as soon as the loss or damage is discovered, and the agent of the carrier advised immediately of such loss or damage, extending privilege of examination of shipment.
7. Bills must be submitted by the general officers of carriers, and on forms furnished by the Government, to be obtained from the Public Printer, Washington, D. C.

SEE FORM—PATD.—ADDRESS BILLS BOOK CO., INC., NIAGARA FALLS, N. Y.

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[fol. 54] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER—
Filed September 19, 1942

On the verified complaint and affidavit herein, and it clearly appearing from specific facts shown by said verified complaint and affidavit that immediate and irreparable damage will result to the plaintiff before notice can be served and a hearing had thereon, said injury being the interference with and obstruction and impairment of the program of the United States for the distribution of fertilizer to facilitate the growth of winter legumes, nitrogen-bearing crops designed to replace chemical nitrogen unavailable for fertilizer purposes because of its shortage due to its use in munitions required by the existing war emergency, and said injury being irreparable because the planting season for such winter legumes in Florida will expire on or about October 15, 1942, and because the program for the distribution of said fertilizer must go forward without delay to permit completion prior to October 15, 1942, and because the conduct of defendants as alleged in the complaint if permitted to continue may be irrevocable and beyond recall as a practical matter, time being of the essence, and because plaintiff has no plain, adequate and speedy remedy at law, and the injury imminent from defendants' acts and threats being so immediate that it is impracticable to give notice prior to the granting of this order, it is Ordered as follows:

1. The defendants above named and each of them, their officers, agents, servants, employees and attorneys, and all [fol. 55] persons in active concert or participation with them are restrained, pending the further order of this Court from: Taking any steps to enforce "stop sale notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or person acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribution of fertilizer and from threatening to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering,

impairing or obstructing in any way the program of the United States with respect to the distribution of fertilizer.

2. The foregoing restraint shall expire within ten days after the entry of this order, unless within such time the same for good cause shown is further extended.

3. Each of the defendants is ordered to show cause before this Court on the 29 day of September, 1942, at 10 o'clock in the forenoon, at Gainesville, Florida, why a preliminary injunction should not be granted herein as prayed in the complaint.

4. A copy of this order, together with a copy of the summons and of the complaint and affidavit annexed thereto shall be served on Nathan Mayo, and on the Governor and Attorney General of the State of Florida, at least five days prior to September 29, 1942.

(S.) Augustine V. Long, United States District Judge.

Issued September 19, 1942, at 3:45 o'clock P. M.

[fol. 56] In United States District Court

Summons and Return

Summons issued on September 19, 1942, directed to Nathan Mayo, Roy Hutchinson, John Doe I, John Doe II, and John Doe III (the names John Doe I, John Doe II, and John Doe III being fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being the persons who issued "stop sale notices" against three certain lots of 20% superphosphate fertilizer, the property of the United States of America), Richard Roe I, Richard Roe II, and Richard Roe III being fictitious, the true names of said defendants being unknown to the plaintiff, the persons intended being certain sheriffs who are seizing or threatening to seize and sell at public sale all superphosphate fertilizer, the property of the United States of America, shipped into their respective counties. Said Summons and return being filed September 24, 1942.

Said Summons bears the following return:

"Received the within Summons on the 19th day of September, 1942, at Gainesville, Florida, and executed same by

delivering to each of the following named persons, a true and correct copy of this writ, and at the same time exhibiting this original Summons and making the contents thereof known to them and each of them, to-wit:

On September 21, 1942, at Tallahassee, Florida

Spessard L. Holland, Governor of the State of Florida;
J. Tom Watson, Attorney General of the State of Florida;
Nathan Mayo, Commissioner of Agriculture of the State of Florida;

Roy Hutchinson, Fertilizer Inspector for Commissioner of Agriculture of the State of Florida;

J. L. Carroll, Fertilizer Inspector for Commissioner of Agriculture of the State of Florida.

(S.) J. B. Royall, United States Marshall.

Marshal's Fees	
Travel	$75.25
Service	10.00
	85.25

[fol. 57] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Filed September 28, 1942

This Court having previously, by order dated September 19, 1942, issued its temporary restraining order herein, and said order having provided *inter alia* that the restraint provided therein should expire within ten days from the entry thereof unless within such time extended for good cause shown, and that defendants should show cause before this Court on September 29, 1942 why a preliminary injunction should not be granted herein as prayed in the complaint, and this Court being of the view that the said application for a preliminary injunction should be heard by a Court of three judges as provided by Section 266 of the Judicial Code (28 U. S. C. Sec. 380) and despite diligent effort it having proven impossible to assemble a Court of three judges to convene on said September 29, 1942 to hear the

said application for a preliminary injunction, now therefore, good cause therefor having been shown as aforesaid, it is

Ordered as follows:

1. Pending the further order of this Court, the restraining order of September 19, 1942 shall not expire on September 29, 1942 but shall be and it is hereby extended for a period of ten days from September 29, 1942; and further,

2. Each of the defendants is ordered to show cause before this Court on the 9 day of October, 1942, at 10 o'clock in the forenoon, at Gainesville, Florida, why a preliminary injunction should not be granted herein as prayed in the complaint, and further,

3. The sending of the following telegram, to be signed by the United States Attorney or an Assistant United States Attorney, to each of the following persons, to wit, Spes- [fol. 58] sard L. Holland, J. Tom Watson, Nathan Mayo, Roy Hutchinson, and J. L. Carroll, shall constitute due notice hereof:

"By order entered September 28, 1942, United States District Judge A. V. Long has extended for a period of ten days the restraining order entered September 19, 1942 in United States v. Nathan Mayo et al., GCA No. 31, United States District Court for the Northern District of Florida, and has set the plaintiff's application for preliminary injunction for hearing on October 9, 1942 at Gainesville, Florida. This telegram is sent by direction of Judge Long."

Augustine V. Long, United States District Judge.

Issued September 28, 1942 at 11 o'clock A. M.

[fol. 59] IN UNITED STATES DISTRICT COURT

ORDER CALLING THREE JUDGE COURT—Filed September 28, 1942

This cause coming on to be heard upon the complaint filed herein on September 19, 1942, by the United States for a temporary injunction against Nathan Mayo, Commissioner of Agriculture of the State of Florida, Roy Hutchinson, as an inspector in the Florida State Depart-

ment of Agriculture, and others,—and it appearing from said complaint that the relief sought provides for suspending or restraining the enforcement, operation, or execution of a Statute of the State of Florida, to-wit: Section 576.11 Florida Statutes 1941, being otherwise referred to as Florida Commercial Fertilizer Law;

And, it appearing to the Court that it is necessary that a three judge court be assembled to pass upon the law and the facts;

It Is Ordered that plaintiff's application for a temporary injunction filed herein on the said 19th day of September 1942 be and the same is hereby set for hearing before the Court in the court room in the Federal Building in Tallahassee, Florida, at the hour of ten o'clock in the morning of October 26, 1942.

That the Honorable Leon McCord, a judge of the circuit court of appeals for the 5th circuit, and the Honorable Curtis L. Waller, one of the district judges of the above entitled court, be and they are hereby called to my assistance to hear and determine said application for temporary injunction at said time and place.

That written notice of the time and place of the hearing on said application for temporary injunction be given to the Honorable Nathan Mayo, Commissioner of Agriculture, and to the Honorable Spessard L. Holland, Governor of the State of Florida, and to the Honorable J. Tom Watson, Attorney General of the State of Florida, and to all other [fol. 60] persons named as defendants in this suit, by mailing to the respective defendants a certified copy of this order at least five days before the date of said hearing.

Done and Ordered in Gainesvtille, Florida, this September 28, 1942.

(S.) Augustine V. Long, District Judge.

[fol. 61] In United States District Court

Order Extending Temporary Restraining Order—Filed October 9, 1942

Gainesville Civil Action No. 31

This Court having previously, by order dated September 19, 1942, issued its temporary restraining order herein, and said order having by order Dated September 28, 1942

been extended for a further period of ten days from the date of expiration thereof, and the undersigned District Judge having entered an order in this cause on September 28, 1942 whereby provision was made pursuant to law to call one Judge of the Court of Appeals for the Fifth Circuit and one District Judge, to the assistance of the undersigned District Judge to hear and determine plaintiff's application for preliminary injunction in this cause at Tallahassee in said District on October 26, 1942 at 10:00 A. M., it is

Considered and Ordered as follows:

1. The temporary restraining order entered in this cause on September 19, 1942 and extended by order entered in this cause on September 28, 1942, is hereby further extended to remain in full force and effect pending the hearing and determination of plaintiff's application for preliminary injunction herein.

2. Plaintiff's application for a preliminary injunction herein is accordingly hereby adjourned until October 26, 1942 at 10:00 a. m., or as soon thereafter as same can be heard. A duly certified copy of this order served by mail upon the defendants and parties restrained hereby shall be deemed and considered sufficient notice of the extent and effect of this order.

Done and Ordered in said Northern District of Florida, this 8th day of October, A. D. 1942.

(S.) Augustine V. Long, United States District Judge.

[fol. 62] IN UNITED STATES DISTRICT COURT

CONSENT ORDER EXTENDING TEMPORARY RESTRAINING ORDER —Filed October 17, 1942

This Court having previously, by order dated September 19, 1942, issued its temporary restraining order herein, and said order having by order dated September 28, 1942 been extended for a period of ten days from the expiration thereof, now, on consent of all the parties hereto, endorsed at the foot hereof, it is

Ordered as Follows:

1. The temporary restraining order of September 19, 1942 as extended is hereby further extended to remain in full force and effect pending the hearing and determination of plaintiff's application for a preliminary injunction

herein, subject however to the right hereby reserved to defendants to move at any time, on ten days' notice to plaintiff, to modify or vacate said temporary restraining order; and further,

2. Plaintiff's application for a preliminary injunction herein is hereby adjourned until October 26, 1942 at 10:00 a. m., or as soon thereafter as same can be heard.

The defendant, Nathan Mayo, is permitted to file his pleadings to the bill on or before the date set for hearing on the application for extension of the present injunctive order and for hearing under a motion to dissolve such injunction, the time for such hearing being October 26, 1942, it being understood that a substantial copy of any such [fol. 63] pleadings to be filed by the defendant will be furnished the United States District attorney not later than October 20, 1942.

(S.) Augustine V. Long, United States District Judge.

Issued: October 17, 1942, at 11:40 o'clock A. M.

We consent to the foregoing order.

(S.) G. E. Hoffman, United States Attorney, Attorney for Plaintiff. (S.) J. Tom Watson, Attorney General of the State of Florida, Attorney for Defendants.

[fol. 64] NOTE RE RESTRAINING ORDERS

The restraint embodied in the foregoing order of September 19, 1942, was duly extended by successive orders and by consent remained in effect pending hearing and determination of plaintiff's application for a temporary injunction.

[fol. 65] IN UNITED STATES DISTRICT COURT

ANSWER OF KNOWN DEFENDANTS—Filed October 23, 1942

The several known defendants named in the complaint filed in the above and foregoing cause, for joint and several answer thereto, say:

First Defense

The complaint fails to state a claim against these defendants or either or any of them, upon which relief can be granted.

Second Defense

The court lacks jurisdiction of this cause and the subject matter thereof, for the reason that the said cause is in effect a proceeding against the State of Florida, by the United States, and seeks to bring into question and to enjoin, suspend or restrain the said State of Florida, through its officers, agencies, agents and employees, acting within the scope of their authority, from the exercise of one of the sovereign functions or police powers reserved to the said state under and by virtue of the Constitution of the United States, to-wit: the inspection, analysis, and control of the use of agricultural fertilizers and fertilizer materials, to be used on, in or mixed with the agricultural and other lands and soils of said sovereign state, by citizens and residents of said state, and on lands which do not belong to and which are not under the jurisdiction and control of the United States; the said cause being in effect, one between the United States and one of the states of the union, and, therefore, within the purview of Article III, section 2, clause 2, of the United States Constitution and within the exclusive jurisdiction of the Supreme Court of the United States.

[fol. 66] Third Defense

The court lacks jurisdiction of this cause and the subject matter thereof, for the reason that the complaint seeks to bring into question and to enjoin, suspend or restrain the enforcement, operation or execution of an order of an administrative board or commission of this state, or to enjoin, suspend or restrain action in compliance with such order, to-wit, rules, regulations and orders, in regard to the inspection, analysis and use of agricultural fertilizers and fertilizer materials, issued by the Commissioner of Agriculture of this state pursuant to Chapter 576, Florida Statutes, 1941, and prior laws, for the enforcement of such statutes, when a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State of Florida.

Fourth Defense

The court lacks jurisdiction of this cause and the subject matter thereof, for the reason that the complaint seeks to bring into question and to enjoin, suspend or restrain the

assessment, levy and collection of an inspection fee or tax imposed by and pursuant to the statutes and laws of the State of Florida, to defray the expenses of inspection and analysis of fertilizers and fertilizer materials, under and pursuant to Chapter 576, Florida Statutes, 1941; when a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State of Florida.

Fifth Defense

The complaint fails to state a cause of action against these defendants, or either or any of them, upon which relief can be granted for the reason that the Soil Conservation and Domestic Allotment Act and other federal statutes and laws, under the authority of which the United States and its agencies, mentioned in the complaint, purport to carry out and perform the program of soil conservation and [fol. 67] to distribute fertilizer in the State of Florida, as alleged in the complaint, are unconstitutional and invade the reserved rights of the State of Florida, in that, they form a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government by the Constitution of the United States.

Sixth Defense

The complaint fails to state a cause of action against these defendants, or either or any of them, upon which relief can be granted, in that it appears, from the face of the complaint and matters judicially noticed: that the activities of the United States, and its agencies mentioned in the complaint, in the purchase, distribution and sale of or other disposal of the superphosphates and other fertilizer materials mentioned in the complaint are done, performed and carried out pursuant to and under the alleged authority of the Soil Conservation and Domestic Allotment Act, and other statutes and laws mentioned in the complaint; that the funds used in the purchase, disposition and disposal of the said superphosphates and other fertilizer materials are public moneys exacted by taxes under the taxing powers of the United States; that the aforesaid Soil Conservation and Domestic Allotment Act and other statutes and laws mentioned in the complaint as applied and construed by the United States and its agencies in making the purchase, distribution and other disposal of the superphosphates and

other fertilizer materials, and as applied and construed in the complaint, form a statutory plan to regulate and control agricultural production in the several states; and that, because of the construction of said acts, statutes and laws aforesaid and the application thereof pursuant to such construction, the said acts, statutes, and laws, as construed and applied, are beyond the powers delegated to the federal government by the Constitution of the United States and are unconstitutional. The contracts and agreements made by [fol. 68] and between the United States, through its agencies, and the farmers of this state, pursuant to said acts, statutes and laws, are likewise outside and beyond the range of federal power and authority and are likewise unconstitutional and void; and the expenditures by the United States and its agencies pursuant thereto are likewise unconstitutional and illegal.

Seventh Defense

The complaint fails to state a cause of action against these defendants, or either or any of them, upon which relief can be granted, in that it appears from the face of the complaint and the matters judicially noticed, that the cause is in effect a proceeding against the State of Florida and its officers, agencies, agents and employees and seeks to bring into question and to enjoin and restrain them from the exercise of sovereign functions and police powers reserved to the said state under the Constitution of the United States, to-wit: the inspection, analysis and control of the use of agricultural fertilizers and fertilizer materials to be used on, in or mixed with the agricultural and other lands and soils of said sovereign state, and on lands which do not belong to and are not under the jurisdiction and control of the United States. The subject matter of the cause likewise relates to the sovereign functions and police powers reserved to the states under the Constitution of the United States.

Eighth Defense

These defendants, answering the complaint herein, say that they:

1. Admit that this is a civil action brought by the United States, as plaintiff; deny that this court has jurisdiction of the cause, as alleged in paragraph one; and are without

knowledge or information sufficient to form a belief as to whether or not this action was brought by direction of the Attorney General of the United States.

[fol. 69] 2. Admit the allegations contained in paragraph two, insofar as they relate to the defendants Nathan Mayo and Roy Hutchinson; but are without knowledge or information sufficient to form a belief as to the truth of the averments in said paragraph two, insofar as they relate to the defendants John Doe I, John Doe II, John Doe III, Richard Roe I, Richard Roe II and Richard Roe III; and admit that they were acting in compliance with and pursuant to the commercial fertilizer statutes and laws of the State of Florida.

3. Admit that the United States purports to be engaged in the disposition of fertilizers in this state; but they are without knowledge or information sufficient to form a belief as to the truth of the averments that this distribution of fertilizers is a part of the soil conservation program of the United States designed to preserve and improve the fertility of the soil of the United States and to accomplish the other purposes enumerated in section one of the Soil Conservation and Domestic Allotment Act, or as to the truth of the averment that such distribution is necessary as a part of said program; (we will answer the allegations contained in the affidavit of Joseph L. Orr, which is made a part of the complaint by reference, in paragraph hereof numbered "3A"); admit that the fertilizers involved in this suit were in this state at the time of the filing of the complaint; but they are without knowledge or information sufficient to form a belief as to the truth of the allegation that such fertilizers were owned by the United States; admit that the superphosphate fertilizer materials were being distributed in this state, evidently by the United States or some of its agencies, on or prior to October 15, 1942, however, they are without knowledge or information sufficient to form a belief as to the truth of the allegation that such distribution was for the purpose of facilitating the planting of certain soil conserving crops designed to increase the nitrogen content of the soil and to compensate for the shortage of chemical nitrogen for fertilizer purposes, due to its use in munitions as alleged, or to form a belief as to [fol. 70] the truth of the allegations that the use of a superphosphate as alleged will leave available for war purposes

nitrogen which would otherwise have to be used for agricultural purposes; deny that the program of the plaintiff must proceed without delay, as alleged, and deny that the carrying out of the program as alleged in the complaint is a part of the sovereign functions of the United States.

3A (Affidavit of Joseph L. Orr) Are without knowledge or information sufficient to form a belief as to the truth of the allegation in the affidavit that the affiant is the Acting Director of the Division of Special Programs of the Agricultural Adjustment Agency; admit the allegations in sub-paragraphs (a) and (b) of paragraph one of said affidavit; are without knowledge or information sufficient to form a belief as to the truth of the allegations in sub-paragraphs (c), (d), (e), (f) and (g) of paragraph one of said affidavit; deny the allegations of paragraph two of said affidavit; are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph three of said affidavit; admit the allegations of paragraphs four and five of said affidavit; deny the allegations of paragraph six thereof and the allegations of paragraph seven thereof, except the allegations as to the labeling of the containers of said superphosphate by the manufacturer in accordance with instructions from the Agricultural Adjustment Agency, as to which allegations these defendants are without knowledge or information sufficient to form a belief as to the truth thereof; are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph eight of said affidavit; and deny the allegations of paragraphs nine and then thereof.

4. Deny that, in the enforcement of the Florida Commercial Fertilizer Law, they are interfering with, obstructing, or threatening to interfere with or obstruct the United States in the exercise of its sovereign functions or any of them in the carrying out of the alleged program for the distribution of fertilizers and fertilizer materials in the [fol. 71] State of Florida; however, these defendants aver the truth to be that they are serving, protecting and benefiting the farmers and the people of the State of Florida, by the uniform enforcement of the Florida Commercial Fertilizer Law, to the end that the farmers and people of Florida, using commercial fertilizers, may know that they are getting and using fertilizers of an approved and guaranteed analysis of quality and are not receiving inferior

fertilizers or being otherwise imposed upon; and further, that the United States, through its agencies as set forth in the complaint, is obstructing and hindering the performance of the official duties of these defendants, imposed upon them by law, in the administration and enforcement of the Florida Commercial Fertilizer Law.

5. Admit the issuance of the "stop-sale notices" on the shipments of fertilizer involved in this suit and the seizure thereof, but are without knowledge or information sufficient to form a belief as to the truth of the averment that said fertilizers were the property of the United States; deny that the Florida Commercial Fertilizer Law was not intended to apply to fertilizers shipped into this state, by the United States or its agencies, for use in the cultivation or conservation of the land and soil of this state, not owned or under the exclusive jurisdiction of the United States; deny that the said commercial fertilizer law, when applied to fertilizers brought into this state by the United States or its agencies for use on lands not owned by or under the exclusive jurisdiction of the United States, are unconstitutional and beyond the powers of the state; deny that said statutes, when construed as aforesaid, conflict with or violate Article VI, clause 2 of the United States Constitution or conflict with any valid act of Congress providing for soil conservation; and deny that the Florida Commercial Fertilizer Law in any way conflicts with any valid act of Congress constitutionally enacted.

6. Deny that the "stop-sale notices" and seizures mentioned in paragraph numbered six of the complaint, were [fol. 72] void, however, they admit that said notices were issued and seizures were made under the provisions of the Florida Commercial Fertilizer Law; deny that the provisions of the Florida Commercial Fertilizer Law may not be construed to apply to the fertilizers and the purported program for its distribution, as alleged in the complaint, and further deny that, construed so as to apply to the said fertilizers and program, the same violates any provision of the Constitution of the United States or conflicts with any act of Congress constitutionally enacted.

7. Deny that the United States, its property or its transactions, as described in and for the purposes mentioned in the complaint, are immune, under the Constitution of the United States, from the Florida Commercial Fertilizer Law

or are outside the intended scope of said fertilizer law, and further deny that the police powers of the State of Florida do not extend to the United States, its property or transactions described in the complaint.

8. Admit the publication, in the Pensacola Journal, of the article quoted in paragraph eight of the complaint, and likewise admit the sending of the telegram, dated September 16, 1942, by Nathan Mayo, Commissioner of Agriculture, for the State of Florida, as set forth in said paragraph; but deny all other allegations in said paragraph eight contained.

9. Deny the allegations in paragraph nine of the complaint contained.

10. Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph ten of the complaint contained.

11. Admit the sending of the telegram, dated September 10, 1942, set out in paragraph eleven of the complaint; and admit the issuance of the "stop-sale notices" mentioned in said paragraph, but deny all other allegations in said paragraph eleven contained.

12. Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph twelve of the complaint contained.

[fol. 73] 13. Are without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph thirteen of the complaint contained.

14. Admit the issuance of the "stop-sale notices" as alleged in paragraph fourteen of the complaint, but deny all other allegations in said paragraph contained.

15. Deny that any injury is threatened, to the United States, any of its agencies, that any injury is imminent or irreparable; deny that the United States has no adequate remedy at law, or that any remedy save injunction is available to it; and say that these defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph fifteen of the complaint.

16. Each and every other and further allegation in the complaint not hereinabove specifically answered is hereby denied.

Affirmative Defense

Further answering the complaint herein, and for affirmative defense, these defendants say:

1. That, regardless of the form of transaction or transactions whereby the fertilizers and fertilizer materials were acquired by or furnished to the United States or its agencies, either within or without this state, and subsequently brought in this state if without this state, and delivered or distributed to persons within this state for use on, in or to be mixed with lands and soils within this state not owned by or within the exclusive jurisdiction of the said United States, such transaction or transactions were in effect and in substance a sale by, or a transfer from, the manufacturer, mixer, or producer of said fertilizers and fertilizer materials to the persons within this state for use within this state, the United States merely acting as an agent or the conduit through which such fertilizer and fertilizer materials passed from the manufacturer, mixer or producer to [fol. 74] the purchaser in this state; the persons in this state receiving and using such fertilizer and fertilizer materials on, in or mixing it with Florida lands and soils, ultimately pay for such fertilizers and fertilizer materials and become the purchaser and owners thereof; that in billing or charging the person in this state, receiving and using said fertilizers and fertilizer materials as aforesaid, for the same the United States passes on to such person any and all fees, taxes and other expenses incurred in connection therewith; that in the actual workings of the distribution aforesaid to persons in this state, of said fertilizers and fertilizer materials, the United States does not of itself pay for said fertilizer and the fees, taxes and expenses in connection therewith but in effect merely acts as a collection agency for the seller.

2. That, under the Florida Commercial Fertilizer Law, the inspection fee therein provided is payable by the manufacturer, mixer or seller of fertilizer or fertilizer materials, offered for sale or sold in this state; that the distribution of the fertilizer and fertilizer materials to persons in this state, by the United States and its agencies in the manner described in the complaint, does not in any way exempt or operate to exempt the manufacturer, mixer or seller from the payment of said inspection fee.

3. That, in carrying out the program under the Soil Conservation and Domestic Allotment Act, as alleged in the complaint, the United States and its agencies, engaged in said program, have intentionally, deliberately and wilfully attempted and are attempting to evade the enforcement of the Florida Commercial Fertilizer Law and the provisions thereof and prevent the inspection of the fertilizers and fertilizer materials sold or offered for sale in or into this state and payment of the inspection fees specified in said law thereon, in that the United States and its agencies, in the carrying out of the said program, have refused to allow manufacturers of fertilizers and fertilizer materials, within [fol. 75] this state, to ship or to deliver fertilizer and fertilizer materials, within the state, to persons within the state to be used on, in or mixed with lands and soils within this state not owned or under the exclusive jurisdiction of the United States pursuant to said program, but have uniformly insisted upon such fertilizers and fertilizer materials being shipped into this state from points outside the state and from manufacturers or mixers located in states and places other than this state; and have likewise uniformly insisted that all fertilizers and fertilizer materials manufactured in this state, to be sold or used under the AAA program, be shipped to persons outside this state and to points of destination beyond the boundaries of this state to be used in, upon and mixed with soils and lands in other states, not belonging to the United States or under its exclusive jurisdiction. The policy aforesaid has been pursued for the purpose of evading the provisions of the Florida Commercial Fertilizer Law and is pursued after the officials in charge of the said AAA program have conceded the applicability of said Florida Commercial Fertilizer Law to such fertilizers and fertilizer materials manufactured or mixed and distributed in this state for use upon lands and soil in this state and the applicability of the payment of the inspection fee under said law as to such fertilizers and fertilizer materials distributed within this state.

4. That the State of Florida has within its boundaries manufacturers and mixers of fertilizers and fertilizer materials, including superphosphates, one or more of which manufacturers and mixers are located in or near most every farming community within this state; that this state is the largest producer of phosphate in the United States and

one of the largest in the world; that phosphate is the principal ingredient in the manufacture and processing of superphosphate; that the said Florida manufacturers and mixers are amply and abundantly able to produce all fertilizers and fertilizer materials, including superphosphate, neces- [fol. 76] sary for utilization in this state under the AAA program and are also amply able to supply all other needs of persons who are not operating under AAA program; and are also amply able to produce, for shipment outside the state, large quantities of fertilizers and fertilizer materials including superphosphate, needed by persons living beyond the boundaries of this state, whether operating under the AAA program or not. That said Florida manufacturers and mixers are not only able to produce, and in fact are now producing the output of fertilizers, fertilizer materials and superphosphate aforesaid, but are also able to and are now producing the same at a cost to the purchaser thereof materially less than the purchase price of fertilizers, fertilizer materials, and superphosphate, bought in other states and shipped into this state, and particularly are the Florida manufacturers and mixers able to produce and deliver superphosphates to the farmers of this state for use upon lands and soils in this state, whether under the AAA program or not, at a cost materially less to said farmers than what said farmers have been paying for superphosphate delivered to them from foreign states under the AAA program, such as are involved in this case.

5. That the officials of the AAA have refused to permit Florida manufacturers and mixers to deliver superphosphates manufactured in this state to farms of this state under the AAA program; which refusal has, evidently, been for the purpose and was intended to evade the inspection of said superphosphates by the authorities of this state and the payment of the inspection fees aforesaid.

6. That the said Soil Conservation and Domestic Allotment Act (section 8) provides for the making of payments or grants or other aid to agricultural producers in the several states under certain conditions and circumstances; and in the act of July 1, 1941 (55 Stat. 408) an amount was made available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials for the purpose of making grants to agricultural producers under certain conditions and circumstances; that the method employed for

making the payments or grants aforesaid, in this state, is [fol. 77] to allot or grant to the agricultural producer a certain and definite sum per acre of land operated by him under the Soil Conservation and Domestic Allotment Act and to charge him for all fertilizer materials furnished him as set out in the complaint, which sum is deducted from the sum or sums allotted or granted him as aforesaid; therefore, these defendants say that the fertilizer is not granted to the said agricultural producer but is purchased by him.

7. That, because of the matters and things alleged next aforesaid, these defendants say that the United States procures the fertilizers and fertilizer materials for the account of the agricultural producers of this state and advances the money for the payment thereof, thereby acting merely and only as the agent or conduit through which the said fertilizers and fertilizer materials pass from the manufacturer or mixer to the agricultural producer in this state.

COUNTER-CLAIM FOR DECLARATORY RELIEF

1. This counter-claim for declaratory relief is brought against the United States of America, plaintiff in the main proceeding herein, under section 28, subdivision 20 and section 274d of the Judicial Code (Title 28, section 41, subsection 20 and section 400, USCA) and against the Mutual Fertilizer Company, a foreign corporation, of Savannah, Georgia; the Georgia Fertilizer Company, a foreign corporation of Valdosta, Georgia; and American Agricultural Chemical Company, a Delaware corporation.

2. These defendants re-aver each and every of the allegations contained in the above and foregoing "affirmative defense".

3. That, in addition to the allegations contained in the "affirmative defense" aforesaid, these defendants further say that:

a. Every manufacturer, importer, mixer, or distributer [fol. 78] of, or agent for the sale of commercial fertilizer and fertilizer materials within this state is required, previous to offering such fertilizer or fertilizer materials for sale or transfer in this state, to file and register with the Commissioner of Agriculture of this state a written statement giving the name and guaranteed analysis of each

brand of fertilizer and fertilizer materials offered for sale by him, however, no fertilizer or fertilizer materials of which the available primary plant food constitutes less than fourteen (14%) per cent thereof may be registered or sold in this state without special permission granted by the Commissioner of Agriculture. (Section 576.03 Florida Statutes, 1941).

b. Under section 576.04, Florida Statutes, 1941, it is unlawful for any manufacturer, importer, mixer or distributor of, or agent for the sale of commercial fertilizer and fertilizer materials within this state to sell, offer for sale, or make delivery of fertilizer or fertilizer materials in this state before the registration thereof has been approved and accepted by the Commissioner of Agriculture as aforesaid.

c. Under section 576.05, Florida Statutes, 1941, every person shipping into or delivering in this state commercial fertilizer or fertilizer materials, in lots of one ton or more, is required to notify the Commissioner of Agriculture of this state thereof, on the date of such shipment, giving the name and address of the consignee, point of destination, quantity and brand shipped, and if shipped by rail in carload lots, the number and initial of the car.

d. Under section 576.07, Florida Statutes, 1941, every package of commercial fertilizer or fertilizer materials manufactured, imported, distributed, transported, stored, kept or offered for sale or sold in or into this state is required to have securely attached thereto a tag showing the name and brand of the fertilizer or fertilizer material, the name and address of the manufacturer, the net weight of the package and other information more fully described [fol. 79] in said section and sections 576.08, 576.09 and 576.10, Florida Statutes, 1941.

e. Under section 576.11, Florida Statutes, 1941, every manufacturer, agent or other person offering for sale or selling commercial fertilizer or fertilizer materials in this state is required to pay an inspection fee or tax of twenty-five (25¢) cents per ton, said inspection fee or tax being levied for the purpose of defraying the expenses of the enforcement, the making of analysis and other necessary

expenditures in connection with the enforcement of the Florida Commercial Fertilizer Law.

f. Under section 576.12, Florida Statutes, 1941, stamps and labels furnished by the Commissioner of Agriculture of this state are required to be attached to each package of fertilizer or fertilizer materials sold or used in this state, to evidence the payment of the inspection fee aforesaid.

g. Under section 576.15, Florida Statutes, 1941, fertilizer or fertilizer materials brought into this state for sale or sold or offered for sale, within this state, without compliance with the requirements of the Florida Commercial Fertilizer Law, and without bearing the stamp, label or tag required as aforesaid, becomes and is forfeited to the State of Florida and immediately becomes subject to seizure and sale by the sheriff of the county wherein found.

h. Under section 576.21, Florida Statutes, 1941, the Commissioner of Agriculture of this state is authorized to establish, and from time to time amend or change, such rules and regulations in regard to the inspection, analysis or sale of fertilizer and fertilizer materials, as in his judgment will best carry out the requirements thereof.

4. These defendants further allege that, under the Soil Conservation and Domestic Allotment Act of the United States, provision is made for the making of payments or grants or the giving of other aid to agricultural producers in the several states under certain conditions and circumstances; and under the Act of July 1, 1941 (55 Stat. 408) an amount was made available for the purchase of seeds, [fol. 80] fertilizer, lime, trees and other farming materials for the purpose of *making grants* to agricultural producers under certain conditions and circumstances; that the method employed for distributing fertilizers and making the payments aforesaid, in this state, is to allot or grant to agricultural producers a certain and definite sum per acre of land operated by him under the Soil Conservation and Domestic Allotment Act and to charge him for all fertilizer and fertilizer materials furnished him, which sum is deducted from the sum or sums allotted or granted him as aforesaid. That the fertilizer and fertilizer materials furnished the agricultural producers as aforesaid is purchased from fertilizer manufacturers by the United States, in

states other than the State of Florida, and shipped into this state where it is distributed to such agricultural producers.

5. These defendants further allege that the United States contends that its purchase and distribution of fertilizer and fertilizer materials as aforesaid is done in the performance of one of its sovereign functions and that the fertilizer and fertilizer materials so purchased and distributed by it are not subject to inspection and analysis, under the Florida Commercial Fertilizer Law, and that said fertilizer and fertilizer materials are not subject to the payment of the inspection fee required under the said Commercial Fertilizer Law.

6. These defendants contend that the inspection, analysis, use and control of agricultural fertilizer and fertilizer materials intended to be used on, in or mixed with the agricultural and other lands and soils of this state, where such lands do not belong to and are not under the exclusive jurisdiction and control of the United States, are within the exclusive sovereign functions and police powers reserved to the state under the Constitution of the United States.

[fol. 81] 7. The following defendants to this counter-claim for declaratory relief shipped the following fertilizer and fertilizer materials, of the fertilizer mentioned in the complaint herein, into this state, at the request of and under the direction of the plaintiff herein, to-wit:

The defendant Mutual Fertilizer Company, a foreign corporation, of Savannah, Georgia, shipped one car, totaling 54.15 tons; The defendant Georgia Fertilizer Company, a foreign corporation, of Valdosta, Georgia, shipped two cars, totaling 79.7 tons; and, The defendant American Agricultural Chemical Company, a Delaware corporation, shipped one car, totaling 50 tons.

None of said fertilizer shipped into this state as aforesaid complied with the requirements of the Florida Commercial Fertilizer Law; and the inspection fees or taxes due and payable thereon have not been paid as required by law. The said defendants to this counter-claim for declaratory relief, as well as the plaintiff United States, each contend that they are not liable for the payment of the inspection

fees or taxes aforesaid due and payable upon the said fertilizer and fertilizer materials; while this defendant, the State of Florida, contends that the said defendants are liable for the inspection fees or taxes upon the fertilizer and fertilizer materials shipped into this state by each of them as aforesaid. This defendant, the State of Florida, further contends that the United States, when it caused the said fertilizer to be shipped into this state, was not acting in its sovereign capacity so as to exempt the said fertilizer and fertilizer materials from inspection and the payment of the inspection fees or taxes thereon.

[fols. 82-83] 8. By reason of these conflicting claims these defendants are in precipitated controversy as to whether or not they are authorized and required to inspect and analyze the fertilizer and fertilizer materials distributed by the United States as aforesaid and whether or not the manufacturer, the United States or other person, is liable for the payment of the inspection fee aforesaid.

Wherefore, these defendants demand that the Court adjudge:

1. Whether or not the distribution of the fertilizer and fertilizer materials by the United States as aforesaid is free and unrestricted from the fertilizer inspection, analysis and control laws of the State of Florida or whether or not these defendants have the right to inspect and analyze such fertilizers for the purpose of determining whether or not they comply with the requirements of the Florida Commercial Fertilizer Law.

2. Whether or not the manufacturer, the United States or any other person is liable for the payment of the inspection fees provided by the laws of Florida and levied upon fertilizer and fertilizer materials sold and distributed within the State of Florida, as to the fertilizer and fertilizer materials distributed by the United States as aforesaid.

(S.) J. Tom Watson, Attorney General of Florida; (S.) Fred M. Burns, Assistant Attorney General of Florida; (S.) H. E. Carter (F. M. B.); (S.) Wm. C. Pierce (F. M. B.), Attorneys for the Known Defendants Named in the Complaint.

Duly sworn to by Nathan Mayo. Jurat omitted in printing.

[fol. 84] IN UNITED STATES DISTRICT COURT

MOTION TO BRING IN ADDITIONAL PARTIES—Filed October 26, 1942

The several known defendants named in the complaint filed in the above and foregoing cause have filed herein their answer and counter-claim, in which counter-claim the following named corporations are made parties to the said counter-claim, to-wit:

The Mutual Fertilizer Company, Savannah, Georgia; The Georgia Fertilizer Company, Valdosta, Georgia; The American Agriculture Chemical Company, a Delaware Corporation;

Whereupon, these defendants show unto the court that the presence of said additional parties is required for granting of complete relief in the determination of the counter-claim and move the court for an order bringing said corporations in as parties defendant and that process be issued and served upon them.

(S.) J. Tom Watson, Attorney General of Florida; (S.) Fred M. Burns, Assistant Attorney General of Florida; (S.) H. E. Carter, Wm. C. Pierce, Attorneys for the known Defendants Named in the Complaint.

[fol. 85] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Civil Action File No. GCA-31

UNITED STATES OF AMERICA, Plaintiff,

v.

NATHAN MAYO, ROY HUTCHINSON, et al., etc., Defendants

To: The Mutual Fertilizer Company, Savannah, Georgia; The Georgia Fertilizer Company, Valdosta, Georgia; and The American Agriculture Chemical Company, a Delaware Corporation, in care of the Corporation Company, 508 Consolidated Building, Jacksonville, Florida.

You and each of you will please take notice that there has been filed in the district court of the United States in

and for the Northern District of Florida the answer and counter-claim of the defendants in the above and foregoing proceeding and that application will be made on Monday, October 26, 1942, for the bringing in of yourselves as parties defendant to the said counter-claim.

Dated at Tallahassee, Florida, this October 23, 1942.

(S.) J. Tom Watson, Attorney General of Florida; (S.) Fred M. Burns, Assistant Attorney General of Florida; (S.) H. E. Carter, Wm. C. Pierce, Attorneys for the Known Defendants Named in the Complaint.

[fol. 86] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Civil Action, File No. GCA-31

UNITED STATES OF AMERICA, Plaintiff,

v.

NATHAN MAYO, ROY HUTCHINSON, et al., etc., Defendants

To: The Mutual Fertilizer Company, Savannah, Georgia; The Georgia Fertilizer Company, Valdosta, Georgia; and The American Agriculture Chemical Company, a Delaware corporation, in care of the Corporation Company, 508 Consolidated Building, Jacksonville, Florida.

You and each of you will please take notice that there has been filed, in the District Court of the United States in and for the Northern District of Florida, a proceeding, by the United States of America, against Nathan Mayo, Commissioner of Agriculture of the State of Florida, Roy Hutchinson and others, seeking to prohibit the enforcement of the Florida Commercial Fertilizer Law, by the said Commissioner of Agriculture of the State of Florida, against commercial fertilizers and fertilizer materials shipped into this state from other states and countries under the direction of the United States and its agencies; that the application for preliminary injunction in the said proceeding will come on for hearing before the district court in Tallahassee, Florida, on October 26, 1942 at 10:00 o'clock in the forenoon; that a counter-claim for declaratory relief against

the United States of America, plaintiff in the main proceeding, and against yourselves will be filed in the above proceeding prior to said October 26, 1942, a copy of which will be furnished you; and that the declaratory relief sought in and by said counter-claim will be a declaratory judgment adjudging and declaring the rights and interests [fol. 87] of the respective parties and your liability for the payment of an inspection fee or tax upon the fertilizers and fertilizer and fertilizer materials shipped by you into this state from other states or countries under the direction of the United States of America or any of its agencies.

You are hereby notified of the time and place of hearing upon the application for preliminary injunction so that you may attend such hearing if you so desire.

Dated at Tallahassee, Florida, this October 22, 1942.

(S.) J. Tom Watson, Attorney General of Florida.
(S.) Fred M. Burns, Assistant Attorney General of Florida.

[fol. 88] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

Civil Action File No. GCA-31

UNITED STATES OF AMERICA, Plaintiff,

vs.

NATHAN MAYO, ROY HUTCHINSON, et al., etc., Defendants

STATE OF FLORIDA,
County of Leon:

On this day personally appeared before me Fred M. Burns, who being by me first duly sworn deposes and says, that he mailed true and correct copies of the above and foregoing notices to the corporations named therein upon the dates stated in the said notices, and that in addition thereto he mailed a copy of the notice dated October 23, 1942, to the Mutual Fertilizer Company, c/o H. G. Clayton, Gainesville, Florida, and to the Georgia Fertilizer Company, c/o Honorable Paul V. Lang, Clerk Circuit Court of Leon County, Florida, who had been named by the said company as resident agent for service of process in Florida. That the resident agent of the American Agriculture Chemical Com-

pany for service of process in Florida is The Corporation Company 508 Consolidated Building, Jacksonville, Florida, to whom said notices were sent.

(S.) Fred M. Burns.

Sworn to and subscribed before me this 26th day of October, A. D. 1942. (S.) Hazel B. Sanderson, Notary Public, State of Florida at Large. (Stamped) My Commission expires July 9, 1945. Bonded by American Surety Co. of N. Y. (Notarial seal.)

[fol. 89] IN UNITED STATES DISTRICT COURT

REPLY OF UNITED STATES TO COUNTER-CLAIM FOR DECLARATORY RELIEF—Filed October 26, 1942

The reply of the United States to the defendants' counter-claim for declaratory relief is as follows:

First Defense

1. The Court lacks jurisdiction over the subject matter of the counter-claim, and over the person of the plaintiff with respect to said counter-claim, in that said claim is a suit against the United States to which Congress has not consented and is outside the scope of the statutes referred to in Paragraph 1 of said counter-claim or any statutes conferring jurisdiction on this Court.

Second Defense

2. The counter-claim fails to state a claim upon which relief can be granted against plaintiff.

Third Defense

3. Mutual Fertilizer Company, a corporation of Savannah, Georgia, and the Georgia Fertilizer Company, a corporation of Valdosta, Georgia, aaginst whom, along with the United States, said counter-claim purports to be brought, are not original parties to this action and have not been made parties in compliance with the provisions of Rule 13(h) of the Federal Rules of Civil Procedure, or otherwise, and their joinder as defendants to the counter-claim brought

under the Tucker Act would be fatal to the jurisdiction of the Court over the counter-claim.

Fourth Defense

4. Insofar as the counter-claim alleges a case or controversy between defendants and Mutual Fertilizer Company and Georgia Fertilizer Company, the Court lacks jurisdiction over the subject matter of said controversy.

[fol. 90] Fifth Defense

5. Replying to Paragraph 1 of said counter-claim, plaintiff avers that neither the statutes referred to nor any statute confers jurisdiction on this Court over the subject matter of said counter-claim.

6. Replying to Paragraph 2 of said counter-claim, which by reference reavers the allegations of the "affirmative defense" set forth in the answer, plaintiff alleges as follows:

(a) Denies the allegations of Paragraph 1 of the said "affirmative defense".

(b) Denies that under the Florida Commercial Fertilizer Law the inspection fee therein provided is payable by the manufacturer, mixer or seller of fertilizer or fertilizer materials, offered for sale or sold in the State of Florida, as applied to the United States, its agencies, or the property and transactions of the United States or its agencies; and denies the other allegations of Paragraph 2 of the said "affirmative defense".

(c) Denies the allegations of Paragraph 3 of the said "affirmative defense".

(d) Plaintiff is without knowledge or information sufficient to form a belief as to the precise extent of the abilities and production of Florida manufacturers and mixers and the cost thereof as alleged in Paragraph 4 of the said "affirmative defense", but repeats the allegations set forth in Paragraph 1(e) of the Orr affidavit annexed to the complaint. Plaintiff denies the allegations of the second sentence of said Paragraph 4.

(e) Denies the allegations contained in Paragraph 5 of the said "affirmative defense".

(f) Denies the allegation contained in Paragraph 6 of the said "affirmative defense" that the fertilizer referred to is not granted to the said agricultural producer but is purchased by him.

[fol. 91] (g) Denies the allegation set forth in Paragraph 7 of the said "affirmative defense".

7. Replying to the allegations set forth in Paragraph 3 of the counter-claim plaintiff alleges:

Denies the allegations contained in sub-paragraphs a, b, c, d, e, f and g of Paragraph 3 of said counter-claim, insofar as they refer to the United States and its agencies and to the property and transactions of the United States and its agencies, including the property, transactions and agencies referred to in the complaint.

Denies the allegations contained in sub-paragraphs a, b, c, claim and 6 of the said "affirmative defense" that the agricultural producer is "charged" for fertilizer material furnished him as alleged in the complaint, except by way of deduction from cash benefits otherwise paid to him as alleged in the complaint and affidavit, said fertilizer material being a grant of materials in lieu of cash.

9. Plaintiff admits that the defendants contend as alleged in Paragraph 6 of the counter-claim but plaintiff denies the validity of said contention.

10. Denies the allegations of Paragraph 7 of the counter-claim.

11. Replying to Paragraph 8 of the counter-claim, plaintiff admits and alleges that a controversy exists as set forth in the complaint and answer herein and in this reply.

12. Repeats and realleges the matters set forth in the complaint.

Wherefore plaintiff demands that the counter-claim be dismissed, that no relief be granted thereon and that no declaratory judgment be made except as may be appropriate in pursuance of the general prayer of the complaint and of Rule 54(c) of the Federal Rules of Civil Procedure.

(S.) Francis M. Shea, Assistant Attorney General,
(S.) G. E. Hoffman, United States Attorney, (S.)

[fols. 92-108] Wm. B. Watson, Jr., Assistant United States Attorney, Attorneys for Plaintiff.

Of Counsel:
(S.) Sidney J. Kaplan, Special Assistant to the Attorney General, (S.) Martin Norr, Attorney, Department of Justice.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Fred B. Northup, being first duly sworn deposes and says:

1. I am Assistant Chief of the Agricultural Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration, United States Department of Agriculture.

2. I have read the draft answer herein furnished by the Attorney General of the State of Florida to the United States Attorney with his letter dated October 16, 1942, and know the contents thereof. I have read the foregoing reply (prepared on the assumption that the answer to be filed herein will not differ materially from the said draft answer) and know the contents of said reply; and the same is true of my personal and official knowledge. For purposes of comparison a copy of the draft answer to which reply is so made is hereto annexed.

(S.) Fred B. Northrup.

Sworn to before me this 23rd day of October, 1942. (S.) James S. Parker, Notary Public. My Commission Expires March 15, 1946. (Notarial Seal.)

[fol. 109] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF WILLIAM G. FINN (No. 1)—Filed October 26, 1942

William G. Finn, being duly sworn, deposes and says:

1. Affiant is Director of the Division of Special Programs of the Agricultural Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration of the Department of Agriculture, an executive department of

the United States, which agency is engaged in carrying out the powers conferred upon the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h et seq.), as authorized under such act (16 U. S. C. 590m).

2. To obtain sufficient superphosphate for the purposes described in the affidavit of Joseph L. Orr sworn to September 17, 1942, and filed in this case, it is necessary to encourage fertilizer manufacturers to produce in excess of their normal production. The Agricultural Adjustment Agency has found it necessary to receive the superphosphate as it is manufactured in order to facilitate this supplemental production. It is important in carrying out the provisions of the Soil Conservation and Domestic Allotment Act so to stimulate superphosphate manufacture for the uses prescribed therein, since such uses are, for the most part, not covered by commercial superphosphate distribution. In the present war emergency, it is more important [fol. 110] than ever that soil-conserving crops be adequately fertilized. To accomplish this with existing facilities for manufacturing superphosphate, some of this fertilizer must be placed on farms during slack seasons.

3. Superphosphate which is delivered in Florida at this time of year is used in the planting of the so-called winter cover crops such as hairy vetch and Austrian winter peas. The normal planting season of these leguminous crops extends to October 15. Most of the seeds for these crops are shipped from the Pacific Northwest into Florida and other States. This year many shipments of such seed did not arrive before October 15. Accordingly, some farmers will plant such seed later than customary in an endeavor to provide as much organic nitrogen for the spring cash crop planting season as possible. This expedient is being used because of the importance of such crops as a source of organic nitrogen to make up for the critical shortage of chemical nitrogen resulting from the demand of the munitions producing industry and the shortage of ocean transportation.

4. Certain other winter cover crops whose contribution to conserving nitrogen is second only to leguminous crops, such as rye grass, may be planted through November for plowing under as "green manure" in the following spring.

Superphosphate is also essential for maximum yields of these crops. Where superphosphate is not used on cover crops, it is made available for use on permanent pastures and on established stands of soil-conserving crops of a perennial nature which are harvested each year for feed for livestock. The demand of the war emergency, the food-for-freedom program of the Department of Agriculture, the necessity for producing food for our armed forces and for our allies as well as for civilian requirements, and the farm labor shortage, demand that every acre devoted to farming produce the maximum amount possible. Pasture and perennial crops used for livestock feed must produce maximum yields in order that the country will have an adequate [fol. 111] meat supply. Leguminous and other green manure crops must be well fertilized in order to insure a substantial stand on these important nitrogen-producing crops.

5. It is necessary that the soil-conserving and the soil-building practices involving the use of fertilizer be carried out continuously and without interruption in Florida throughout the year in order that each farmer may plan his operations in such a way as to obtain the maximum yield from every acre in production.

6. If the activities of the Agricultural Adjustment Agency are obstructed by the defendants in this action, the resulting impairment of the efficiency of agricultural production will constitute an interference with the food production program and will be an interference with the war effort.

7. The farmers of Florida need 10,000 tons of fertilizer for the uses described above between July 1 and December 31, 1942. The Agricultural Adjustment Agency is only able to supply approximately 80 per cent of this amount, because, considering the requirements of all the States, only that amount is available for shipment into Florida. Through October 3, 1942, orders had been placed for shipment into Florida of 2,955 tons. The Agricultural Adjustment Agency will endeavor to ship into Florida between that date and December 31 another 5,000 tons, doing so in considering the needs of the farmers in the State of Florida in relation to the needs of farmers in other States.

8. While for the purposes of certain crops referred to in paragraph 8 of the affidavit of Joseph L. Orr, sworn to September 17, 1942, it was essential to provide distribution of

fertilizer in aid of crops required to be planted by approximately October 15, 1942, there is also a continuing vital need extending beyond October 15, 1942, in connection with other crops. As shown above it is essential to provide continuous distribution of fertilizer in the State of Florida through December 1942.

[fol. 112] 9. The restraining orders heretofore issued in this case eliminated the obstruction to distribution of fertilizer for plantings prior to October 15, 1942. That, however, is only a part of the Government's need. In view of the further and continuing need of the Government it is necessary that there be a preliminary injunction continuing in effect the terms of the restraining order.

10. Moreover, the Government's problem is not merely a seasonal one; it is recurrent and perennial. The Government's program is not for the year 1942 alone. It requires planning for years to come. The injunction now sought is needed in aid of the total program as well as for the presently demanding emergency.

(S.) William G. Finn, Director, Division of Special Programs.

Duly sworn to by William G. Finn. Jurat omitted in printing.

[fol. 113] In United States District Court

Affidavit of William G. Finn (No. 2)—Filed October 26, 1942

William G. Finn, being duly sworn, deposes and says:

1. Affiant is Director of the Division of Special Programs of the Agricultural Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration of the Department of Agriculture, an executive department of the United States, which agency is carrying out the powers conferred upon the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h et seq.), as authorized under the act of February 29, 1936 (16 U. S. C. 590m).

2. The United States, through the Agricultural Adjustment Agency, purchases 18 percent, 19 percent, and 20

percent superphosphate for distribution to farmers engaged in carrying out the soil conserving and soil building practices prescribed by the Secretary of Agriculture pursuant to the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590g et seq.). Preference is given to the purchase of 20 percent superphosphate when available and when such 20 percent superphosphate is not available 19 percent and 18 percent superphosphate is purchased in that order. It has been necessary to purchase large quantities of 18 and 19 percent superphosphate for the reason that sufficient 20 percent superphosphate is not available.

3. Such purchases are made under contracts between producers of the superphosphate and the United States (representative of such contracts are Contract Als-26963, between the United States and the Mutual Fertilizer Company, and Contract Als-27003, between the United States and the Georgia Fertilizer Company, copies of which are attached to and made a part of the affidavit of Joseph L. [fol. 114] Orr, as Exhibits 1 and 2, filed in this case). The contracts provide, among other things, the following as conditions "C" and "D" of the Special Conditions:

"C. Analyses of samples of fertilizer shipped under any award pursuant to this advertisement, taken either at shipping point or destination at the option of the Government will be made by chemists designated by the Government and according to the method prescribed by the American Association of Official Agricultural Chemists. The Government reserves the right to accept such analyses as final and conclusive.

"D. Payment for superphosphate furnished will be at the ton price quoted. Material falling below the guaranteed P_2O_5 (phosphorous pentoxide) content will be rejected; provided, however that material delivered which falls slightly below the guaranteed P_2O_5 content may be accepted if the exigencies of the program so require, in which event payment will be made on the basis of each full unit (20 pounds) of the actual P_2O_5 content in a ton."

4. Such superphosphate is sampled and analyzed by the United States through such agencies as it designates, for the purpose of satisfying the United States that the materials delivered to it under contract are the materials called

for by the specifications of the contract, and for the purpose of ascertaining that the farmers participating in this phase of the agricultural conservation program are receiving superphosphate of sufficient quality to enable them to carry out desirable soil building practices.

5. In the southern region, which region includes Florida, superphosphate is sampled and analyzed by agencies designated by the United States. Samples are taken by the consignees of the material before such material leaves the freight cars.

6. Official instructions of the Agricultural Adjustment Agency require that the consignee of the fertilizer shall (1) take samples and submit such samples to State laboratories where such arrangement can be effected with the State concerned, or (2) where arrangements cannot be made with a State laboratory, the samples are mailed to a division of the United States Department of Agriculture at Beltsville, Maryland, where the United States maintains [fol. 115] laboratories for analysis and research work in farm products and other products which affect agriculture.

7. Samples are taken from at least one of every ten shipments (a carload is a shipment) delivered under each contract at rail heads within the particular State.

8. Samples are taken, in conformity with rules adopted by the Association of Official Agricultural Chemists, by an official representative of the county agricultural conservation association, an agency of the United States established pursuant to the provisions of the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h(b)).

9. Each sample consists of at least one pound of superphosphate taken in the following manner:

(a) Representative samples are taken from not less than 10 percent of the bags present unless such procedure necessitates samples from more than 20 bags, in which case one bag from each additional ton must be sampled. Where the shipments consist of less than 100 bags, samples are taken from at least 10 bags. If the shipment consists of less than 10 bags, all bags are sampled.

(b) The rules of the Association of Official Agricultural Chemists, which apply to fertilizers generally, prescribe the use of a core sampler which removes a sample from the

top to the bottom of the bag. This method permits burlap or cotton bags to reclose after the core sampler is removed. The fertilizer shipped to and distributed by the Agricultural Adjustment Agency is shipped in paper bags to conserve critical materials and therefore the bags must be opened for sampling. The person taking the sample is instructed to take a portion of the superphosphate from the bag, being careful to obtain a representative sample thereof. Such sample is then placed in a container and submitted to the appropriate testing laboratory.

[fol. 116] (c) Because superphosphate is manufactured by a chemical process rather than a mechanical process (as distinguished from mixed fertilizers), it is a generally accepted fact that the material runs uniform throughout a particular lot as to the available phosphorous pentoxide in such superphosphate. The United States through the Agricultural Adjustment Agency has determined that the sampling described in subsections (a) and (b) of paragraph 9 is adequate sampling.

10. If a shipment under a particular contract is shown to be deficient, more frequent samples are taken. Samples may be taken at the point of manufacture if the deficiencies continue to exist in order that such fertilizer will not be shipped into a State.

11. In all instances the actual cost of the inspection provided by the Federal Government is less than the statutory fee imposed by State laws.

(S.) William G. Finn, Director, Division of Special Programs.

Duly sworn to by William G. Finn. Jurat omitted in printing.

[fol. 117] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF FRED B. NORTHRUP—Filed October 26, 1942

Fred B. Northrup, being duly sworn, deposes and says:

1. Affiant is Assistant Chief of the Agricultural Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration of the Department of Agricul-

ture, an executive department of the United States, which agency is carrying out the powers conferred upon the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h et seq.), as authorized under the act of February 29, 1936 (16 U. S. C. 590m).

2. Attached hereto is a copy of a letter from Robert H. Shields, Solicitor, United States Department of Agriculture, addressed to the Attorney General, dated October 19, 1942. I have read this letter and know the contents thereof. The statements of fact contained in said letter are true of my personal and official knowledge.

(S.) Fred M. Northrup, Assistant Chief.

Duly sworn to by Fred B. Northrup. Jurat omitted in printing.

[fol. 118] UNITED STATES DEPARTMENT OF AGRICULTURE

Office of the Solicitor

Washington, D. C.

October 19, 1942.

The Honorable
The Attorney General

DEAR MR. ATTORNEY GENERAL:

Reference is made to previous correspondence relating to the case of *United States* v. *Nathan Mayo et al.*, Civil Action GCA-31, in the United States District Court for the Northern District of Florida (your file FMS:MN 106-18-39).

We are advised by your Department that this case has been set for a hearing before a three-judge court in Tallahassee, Florida, on October 26, 1942, and desire to bring various aspects of the matter to your attention for your presentation to the court.

It is important to the program of the United States administered by this Department that the officers and agents of the State of Florida and all other states seeking to interfere with the Government's fertilizer distribution program and related programs under color of authority of State inspection, labelling, fee and similar laws, be restrained from so doing. The Department in its agricultural conservation

program plans to distribute during the fiscal year ending June 30, 1943, approximately a million and a quarter tons of superphosphate, a valuable fertilizing material, in the 34 states in which the use of fertilizing materials plays an important part in the building and conserving of the soil. There is attached (marked Appendix A) a schedule of the estimated monthly distribution, by states, for the program year from July 1, 1942, through June 30, 1943. This schedule reflects the total needs of farmers for Agricultural Adjustment Agency fertilizer for the six months' period ending December 31, 1942, as 726,668 tons. To date, the Department has been able to contract for the purchase of approximately 650,000 tons. This total is increased from time to time as the Department is able to obtain sources of supply. The schedule attached shows the estimated needs for the fertilizer in each State in each month. Of course, in carrying out the program practical problems such as availability will result in variation from these figures.

The Government's estimated program shown on the attached schedule calls for the distribution of 10,000 tons of superphosphate fertilizer in Florida by the end of December 1942, if that amount proves available. Based upon the figures discussed above, it appears that approximately 60 percent of the material, or 8,000 tons, will be available for distribution in Florida and will have been distributed by December 31, 1942, if there is no interference with our program. From information which has been furnished this office, it appears that approximately 5,000 tons will be distributed in Florida in the months of October, November, and December.

The problem of interference with the Federal program for the distribution of fertilizer and with other Federal programs of like character by State officers acting under color of authority of State laws of the kind involved is not limited to Florida. You will recall that in North Carolina State officers in April 1942, seized all shipments of Federally-owned peanut and soybean seed in the State, and that at the request of this Department your Department instituted suit [fol. 119] and obtained a temporary restraining order, after which the conduct complained of was abandoned. In Alabama, several shipments of superphosphate were recently placed under so-called "stop sale notices" (like those used in Florida), but these were later rescinded. In Mississippi, there is a prospect of an amicable arrangement. The State

Commissioner of Agriculture requested from the State Legislature and obtained legislation (Laws of Miss. 1942, Chapter 258) authorizing him to enter into an agreement with this Department for the analysis of our fertilizer on a fee per sample basis, and negotiations looking toward the sampling and analysis of the fertilizer on a cost per analysis basis have been carried forward. At the present time, we are awaiting formal execution of the agreement by the Mississippi officials.

This proposed agreement in Mississippi is a contract for services, not a waiver of the Government's constitutional immunity. This Department makes every effort, where the Government's interests in our judgment permit, to utilize State facilities and service on a *quid pro quo* basis, doing so as a matter of voluntary agreement. We cannot, however, and do not submit to legal compulsion exerted on the Government's property and transactions by State officers under color of State laws. In some States the samples are taken by our agents and submitted to the Department's research laboratory at Beltsville, Maryland, where the samples are analyzed. We need this analysis in order to assure that we have obtained the fertilizer called for in the contract specifications. In an effort to accom-odate the views of the States without subjecting the Government to illegal regulations, we have attempted to work out agreements by which the State officials will do the sampling and analyzing, or in some cases only the analyzing, on a cost per sample basis. In those situations, we pay only for actual services rendered. Such an agreement is in force in Indiana. We are negotiating with North Carolina and South Carolina in an attempt to work out similar agreements. In Ohio, West Virginia, California, and Oregon, the sampling and the analysis are made by the States free of charge. In Virginia, the Department's agents take the samples but the Virginia laboratories perform the analysis free of charge. In Kentucky, perhaps fifty per cent of the samples taken are analyzed by that State without charge. In Missouri, this Department has detailed an employee to the State laboratory in order to perform analyses for the Agricultural Adjustment Agency.

This problem of interference also arose in Texas. This office wrote to the Texas officials outlining our position with respect to the inapplicability of their inspection laws to the United States, and received a reply including an opinion

of the Attorney General of Texas in which the Attorney General concurred in our position. A copy of the opinion of the Attorney General of the State of Texas, approved July 13, 1942, is enclosed (Marked Appendix B). There has been no difficulty in Texas since that time.

As you know, when the officials of Florida began seizing the Agricultural Adjustment Agency fertilizer, Nathan Mayo sent a telegram to the Secretary of Agriculture, copy of which is set out in paragraph 8 of the verified complaint filed in this case. Officials of several other States also wired the Secretary joining in Mr. Mayo's protest and concurring in his position. Copies of telegrams from the Commissioners of the States of Alabama, Georgia, Louisiana, North Carolina, and South Carolina, are attached (marked Appendix C).

There is also attached (marked Appendix D) a statement containing a brief description of the fertilizer laws, as such laws pertain to the problem now involved, of the several States where some question has arisen.

The result of the controversy now in litigation in the pres- [fol. 120] ent case may, therefore, be expected to have wide implications extending throughout many states. This Department is anxious that the court should know of the efforts we have made to adjust our operations to meet the views and problems of the States, and of our willingness to continue working out these matters reasonably on an amicable cooperative basis. However, we cannot submit the United States, its property and transactions, to State regulation not constitutionally applicable.

If you consider it advisable to submit the foregoing data to the court in affidavit form, I shall be pleased to obtain an affidavit as to the statements of fact included in this letter.

Sincerely yours, Robert H. Shields, Solicitor.

By direction of the Secretary.
Enclosures.

(Here follows 1 paster, Exhibit A, side folios 121-122)

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[fol. 121]

APPENDIX A

1942–43 Estimated Monthly Distribution—By States

State	July	Aug.	Sept.	Oct.	Nov.	Dec.	Sub Total	Jan.	Feb.	Mar.	April	May	June	Sub Total	Total
East Central															
Maryland	–0–	225	550	400	175	100	1,450	250	550	825	350	150	–0–	2,125	3,575
Delaware	–0–	25	25	–0–	–0–	–0–	50	25	50	50	25	–0–	–0–	150	200
Virginia	6,620	5,160	11,810	13,350	14,140	9,720	60,800	4,080	5,510	2,490	1,560	310	–0–	13,950	74,750
W. Virginia	3,202	7,198	9,149	6,827	3,989	1,966	32,331	1,386	1,936	4,485	3,044	1,652	390	12,893	45,224
N. Carolina	1,270	1,720	3,378	2,870	3,300	3,495	16,033	4,480	5,260	3,850	1,600	800	700	16,690	32,723
Kentucky	16,626	21,903	27,892	22,156	11,639	7,058	107,274	9,611	20,573	23,718	20,723	11,226	6,362	92,213	199,487
Tennessee	8,022	12,705	13,264	9,844	5,702	4,212	53,749	5,527	11,222	10,769	7,319	3,197	1,179	39,213	92,962
Totals	35,740	48,936	66,068	55,447	38,945	26,551	271,687	25,359	45,101	46,187	34,621	17,335	8,631	177,264	448,921
North Central															
Illinois	1,400	1,500	1,000	700	500	400	5,500	900	1,200	2,000	1,200	700	500	6,500	12,000
Indiana	2,210	1,700	1,350	670	360	400	6,690	1,150	3,170	2,640	1,960	703	540	10,163	16,853
Iowa	2,010	2,025	1,865	1,500	1,500	2,500	11,400	2,500	2,500	2,500	2,000	2,000	1,600	13,100	24,500
Michigan	2,400	1,000	1,500	3,000	3,200	3,500	14,600	5,000	7,000	7,000	9,000	7,000	4,000	39,000	53,600
Minnesota	1,505	1,315	1,535	2,800	2,200	1,000	10,355	1,760	3,560	3,635	1,805	930	400	12,090	22,445
Missouri	3,420	3,900	2,490	2,700	2,190	2,430	17,130	2,600	3,040	2,730	1,600	1,520	1,380	12,870	30,000
Ohio	4,000	4,000	3,000	1,000	1,000	1,000	14,000	3,000	4,000	4,000	3,000	1,000	1,000	16,000	30,000
Wisconsin	3,000	6,000	7,000	6,000	2,000	2,000	26,000	1,000	5,000	5,000	5,000	5,000	3,000	24,000	50,000
Total	19,945	21,440	19,740	18,370	12,950	13,230	105,675	17,910	29,470	29,505	25,565	18,853	12,420	133,723	239,398
[fol. 122] **Northeast**															
Maine	725	2,900	1,450	3,625	1,450	1,450	11,600	1,450	1,450	–0–	–0–	–0–	–0–	2,900	14,500
N. H.	625	2,500	1,250	3,125	1,250	1,250	10,000	1,250	1,250	–0–	–0–	–0–	–0–	2,500	12,500
Vermont	2,000	8,000	4,000	10,000	4,000	4,000	32,000	4,000	4,000	–0–	–0–	–0–	–0–	8,000	40,000
Mass.	550	2,200	1,100	2,750	1,100	1,100	8,800	1,100	1,100	–0–	–0–	–0–	–0–	2,200	11,000
R. I.	85	340	170	425	170	170	1,360	170	170	–0–	–0–	–0–	–0–	340	1,700
Conn.	375	1,500	750	1,875	750	750	6,000	750	750	–0–	–0–	–0–	–0–	1,500	7,500
N. Y.	4,000	16,000	8,000	20,000	8,000	8,000	64,000	8,000	8,000	–0–	–0–	–0–	–0–	16,000	80,000
Penna.	1,000	4,000	2,000	5,000	2,000	2,000	16,000	2,000	2,000	–0–	–0–	–0–	–0–	4,000	20,000
Total	9,360	37,440	18,720	46,800	18,720	18,720	149,760	18,720	18,720	–0–	–0–	–0–	–0–	37,440	187,200
Southern															
Alabama	1,500	6,000	10,000	8,000	3,000	1,000	29,500	2,000	8,500	3,000	3,800	1,200	500		48,500
Arkansas	1,800	4,900	12,750	8,500	5,400	2,300	35,650	1,750	3,850	2,150	2,450	1,750	1,400		50,000
Florida	1,000	1,200	2,750	3,000	1,250	800	10,000	–0–	–0–	–0–	–0–	–0–	–0–		10,000
Georgia	1,460	2,779	15,883	18,982	7,812	730	47,646	3,516	16,476	19,258	10,714	2,409	708		100,727
Louisiana	–0–	–0–	2,000	4,000	2,000	–0–	8,000	230	1,000	500	270	–0–	–0–	2,000	10,000
Miss	2,500	4,000	3,000	1,425	1,150	400	12,475	400	1,500	1,700	500	300	200	4,600	17,075
Okla.	1,750	1,350	1,037	688	175	75	5,075	188	1,700	2,600	1,700	800	437	7,425	12,500
S. C.	–0–	–0–	900	1,500	1,000	300	3,700	1,000	1,600	1,105	1,005	1,005	400	6,115	9,815
Texas	1,400	1,800	7,700	12,600	16,000	8,000	47,500	4,000	6,500	7,000	4,500	2,800	1,400	26,200	73,700
Total	11,410	22,029	56,020	58,695	37,787	13,605	199,546	13,084	41,126	38,313	24,939	10,264	5,045	132,771	332,317

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[fol. 123] APPENDIX B

Office of the Attorney General of Texas
Austin

Gerald C. Mann, Attorney General, Agricultural & Mechanical College of Texas, College Station, Texas.

Attention: G. S. Fraps, State Chemist

Opinion No. O-4617

Re: Collection of Inspection Tax on Fertilizer Distributed in Texas by the Agricultural Adjustment Administration

DEAR SIR:

You request an opinion of this Department on the question whether the inspection tax imposed by Texas law on commercial fertilizers sold in Texas may be collected from the Agricultural Adjustment Administration, which distributes in Texas to Texas farmers fertilizers purchased by it outside of Texas.

Texas Revised Criminal Statutes, 1925, Arts. 1709 through 1720, and Civil Statutes, Arts. 94 through 108, regulate the sale of commercial fertilizer within the State of Texas. To defray expenses of inspection and enforcement of these regulatory laws, an inspection fee of 25¢ per ton is provided for commercial fertilizer "sold or exposed, or offered for sale in this State" by "all corporations, firms or persons".

The Agricultural Adjustment Administration is a federal agency or instrumentality. From your letter and accompanying documents it appears that the A. A. A. is distributing to farmers in Texas commercial fertilizer purchased by the A. A. A. outside of Texas, in the following manner: The farmer is furnished fertilizer on the basis of a price of so much per hundred pounds. To the extent of the quantity of fertilizer furnished the farmer at the stipulated price, when the farmer makes application for his Agricultural Conservation Payment the amount of fertilizer theretofore furnished to him by the A. A. A. is deducted from that payment.

This activity of the A. A. A. is authorized by 16 U. S. C. 1940 ed. 590h(b), which provides:

"(b) Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 7 (a) by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treat- [fol. 124] ment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion; (2) changes in the use of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption; or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 7(a); or (5) any combination of the above. In arid or semiarid sections, (1) and (2) above shall be construed to cover water conservation and the beneficial use of water on individual farms, including measures to prevent run-off, the building of check dams and ponds, and providing facilities for applying water to the land. In determining the amount of any payment or grant measured by (1) or (2) the Secretary shall take into consideration the productivity of the land affected by the farming practices adopted during the year with respect to which such payment is made. In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local

committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually, the county committee for the county which shall consist of three members who are farmers in the county. The local committee shall select a secretary and may utilize the county agricultural extension agent for such purpose. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have the power to vote. In any county in which there is only one local committee the local committee shall also be the county committee. In each State there shall be a state committee for the state composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall [fol. 125] be ex officio a member of such State Committee. The ex officio members of the county and State committees shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary—shall, as far as practicable, protect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleted crops. Rules and regulations governing payments or grants under this

subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices. *Notwithstanding any other provision of law, in making available conservation materials consisting of seeds, seed inoculants, fertilizers, liming and other soil-conditioning materials, trees, or plants, or in making available soil-conserving or soil-building services, to agricultural producers under this subsection, the Secretary may make payments, in advance of determination of performance by the producers, to persons who fill purchase orders covering approved conservation materials or covering soil-conserving or soil-building services, furnished to producers at not to exceed a fair price fixed in accordance with regulations to be prescribed by the Secretary, or who render services to the Secretary in delivering to producers approved conservation materials for the carrying out, by the producers, of soil-building or soil-conserving practices approved by the Secretary.* (16 U. S. C. 1940 ed 590h (b).)'' (Emphasis ours.)

The agricultural conservation program in which the United States is engaged is designed to conserve the soil resources of the U. S. Section 8, clause 1, of the Constitution of the U. S. confers upon the Congress the power ''to lay and collect taxes, duties, imposts, and excises, to * * * provide for the * * * general welfare of the United States; * * *'' The power exercised by the Congress in the establishment of the Soil Conservation Program is the power necessarily implied from the power thus expressly conferred by the Constitution, to wit, the right to expend the ''taxes, duties, imposts, and excises'' collected for the purpose of promoting ''the general welfare of the United States''.

[fol. 126] It may well be doubted that the distribution of the fertilizer in Texas by the A. A. A. constitutes a ''sale'', within the purview of our State laws. It would seem that the fertilizer is ''granted'' to the farmer in advance of performance of the conditions entitling him to a cash grant or payment; that the fertilizer grant is in lieu of the cash grant, and that the price or value of the fertilizer is established in order that the amount of cash to be deducted from the cash grant or payment may be determined. Whether this constitutes a sale, within the meaning of the Texas law,

we find unnecessary to determine, for we are of the opinion that, even though the transaction is a sale, the inspection tax or fee cannot be collected from the Federal agency.

It is a familiar principle, established since McCulloch v. Maryland, 4 Wheat. 316 (U. S. 1819), that the States cannot interfere with, burden, or impede the Federal government or its authorized instrumentalities in the exercise of any of the powers vested by the Constitution of the United States in the Congress of the United States. The principle has been announced most frequently in those cases involving an attempt to collect a State tax from a Federal instrumentality. It has, however, equal application to the enforcement of State regulatory laws against Federal instrumentalities. Johnson v. Maryland, 254 U. S. 51; Hunt v. U. S., 278 U. S. 96; Arizona v. California, et al., 283 U. S. 423; Ohio v. Thomas, 173 U. S. 276; Easton v. Iowa, 188 U. S. 220; Ex parte Willman, 277 Fed. 819; Posey v. T. V. A., 93 F. (2d) 726; United States v. Query, 21 Fed. Supp. 784.

The *exa*tion presently involved is an inspection fee, rather than a tax. But whether it be a tax or an inspection fee, an exertion of the taxing power or of the police power of the State, it operates directly and immediately upon the Federal instrumentality in the exercise of the power conferred upon it by the Congress, and directly burdens the instrumentality in the exercise of that power. The agency of the United States is immune from and cannot be required to pay the fee or tax involved.

The fee or tax cannot be justified by reasoning that there is no real burden because the instrumentality might pass the fee or tax on to the farmer by increasing the price of the fertilizer, or might require those from whom it purchases the fertilizer outside of the State to comply with Texas regulations. With equal plausibility every State tax on Federal activities might be justified by the observation that no real burden exists because the amount of the State tax may be passed on by the Federal government through the collection of increased Federal taxes.

The situation here is not to be confused with the cases where the burden or regulation affects the Federal instrumentality only remotely or indirectly, as in the case where the tax or regulation operates directly upon a private person or corporation not an instrumentality or agent of the Federal government. See Alabama v. King & Boozer, 314

U. S. 1; James v. Dravo Contracting Co., 302 U. S. 134. Thus, a private person, firm, or corporation selling commercial fertilizer to the Agricultural Adjustment Administration in Texas is subject to its laws; the fact that the sale is made to the Federal instrumentality does not clothe the vendor with the immunity possessed by the vendee.

[fol. 127] Likewise, we are not to be understood as holding that employees of the United States and its agencies secure a general immunity from State laws while engaged in the performance of their duties. Such State regulations as affect only incidentally the mode of carrying out those duties may well apply to the employees of Federal instrumentalities (see Johnson v. Maryland (above); the immunity, however, does extend to those regulations which directly impede or burden the employee in the discharge of his Federal duties.

Yours very truly, Attorney General of Texas;
(Signed) by R. W. Fairchild, Assistant.

FWF:hp.

Approved Jul. 13, 1942. Gerald C. Mann, Attorney General of Texas.

Approved Opinion Committee by BWB, Chairman.

[fol. 128] APPENDIX C

WP069 63 DL

Montgomery Ala 1235P Sept 21 1942

Hon Claude Wickard Secretary US Dept of Agriculture
Washington DC

I heartily join and endorse Florida Commissioner of Agriculture Mayo's wire to you complaint in reference to phosphate situation that was brought about by the AAA officials requesting fertilizer companies not to pay inspection fees as required by laws of several States Stop. I hope you will request the AAA to cooperate with commissioners of various states and rescind their request in matter

Haygood Paterson Commissioner. 243 P.

[fol. 129] WAA 210 77 DL CG Atlanta Ga Sept 18, 1942
1159 A

Hon. Claude G. Wickard
Secretary of Agriculture

Subordinate AAA officials are ignoring Georgia fertilizer inspection laws and my information is that they are instructing fertilizer dealers to do likewise on any superphosphate sold through AAA to Georgia farmers. This situation has been threshed out pro and con between this department and AAA officials with unsatisfactory results. Georgia laws are very definite and give me no discretion as to enforcement. An canceling right to do business of any concern party to this high handed procedure.

Tom Linder Commissioner of Agriculture, 133 P.

AAA AAA AAA

[fol. 130] 4POX 70NL

Baton Rouge La Sep 17 1942

Hon. Claude Wickard
Secy

I heartily join and endorse Fla commissioner of agriculture Mayo's wire to you his complaint in reference to the phosphate situation that was brought about by the AAA officials requesting fertilizer companies not to pay inspection fees as required by laws of the several states Stop I hope that you will request the AAA to cooperate with the commissioners of the various states and rescind their request in this matter

Harry D. Wilson Commissioner 745 AM

[fol. 131] WAA 186 23

Raleigh N Car Sep 12 01 P. 1942

Hon. Claude R. Wickard

Commissioner May of Florida is right in his contention that triple A should comply with State inspection laws Stop Triple A should cooperate

W. Kerr Scott N Car Commissioner of Agriculture
1243 P

AA

[fol. 132] WPO 48 46
Columbia SCar 1050 A Sep 21 1942

Hon Claude R. Wickard
Secretary of Agriculture (Washington DC)

See no reason why all fertilizer sold through AAA should not conform with State laws including payment of tax Stop Will appreciate your advising AAA representatives in South Carolina to comply Stop State board of fertilizer control embarrassed by any other procedure and law enforcement is hampered

J Roy Jones Commissioner of Agriculture

1258 P AAA AAA MK TT Payment of Tax

[fol. 133] APPENDIX D

Alabama.—Title 2, Code of Alabama 1940, Sections 282-300 and 494-503. In section 294 a stamp tax or fee of 30 cents a ton is imposed for each ton of fertilizer sold in the State. The Commissioner of Agriculture is authorized to suspend fertilizer from sale if such fertilizer does not comply with all the requirements of the act (see 494). If anyone then moves, sells, or otherwise disposes of such product, he is guilty of a misdemeanor. Section 495 provides for the condemnation and confiscation of adulterated or misbranded fertilizer, which may be had in the circuit court of the county in which the fertilizer is seized.

Arkansas.—The fertilizer law is found in Sections 1872-1892 of Pope's Digest of the Statutes of Arkansas 1937. Section 1878 provides for an inspection fee of 12½ cents a ton. Section 1889 provides that the commissioner shall have the authority to stop the sale of any fertilizer material found in violation of the act.

Georgia.—The fertilizer law is found in Sections 5-1001–5-1406 of the Georgia Code of 1933, as amended by the Laws of Georgia 1938, Extra Session, page 205. In section 5-1118 an inspection tax of 30 cents a ton is imposed. Section 5-1406 (as added by 1938 laws, page 213) provides a method of seizing and selling all fertilizer sold or offered for sale in violation of law. The fertilizer is condemned, seized by the commissioner of agriculture, turned over to the sheriff of the county in which such seizure is made, and held until

released by the commissioner of agriculture. If it is not released by the commissioner of agriculture, it shall be sold by the sheriff on the order of the court "before whom conviction may be had."

Louisiana.—The fertilizer law is found in Sections 107-131 of Dart's Louisiana General Statutes 1939. Section 107 provides for rules and regulations for carrying out the purposes of the fertilizer law. Section 127 provides an inspection tax of 25 cents a ton for fertilizer sold or offered for sale in Louisiana and requires a tax tag to be attached. Section 117 provides that fertilizer sold in violation of this fertilizer law is subject to seizure and may be sold upon order of the court.

[fol. 134] *North Carolina.*—The law is contained in Sections 4689 (as amended—see 1941 supplement) and 4690-4703 of the North Carolina Code of 1939. In section 4700 it is provided that all fertilizer sold or offered for sale contrary to the provisions of the article shall be subject to seizure, condemnation, and sale by the commission. Section 4701 provides that such seizure and sale shall be made under the direction of the commissioner. The sale is made at auction after a 30-day advertising period. Section 4702 provides that a charge of 25 cents a ton shall be paid before a delivery to agents, dealers, or consumers in this state.

Oklahoma.—The fertilizer law of Oklahoma is in Sections 8834-8852 of the Oklahoma Statutes 1931. Section 8837 provides for payment of an inspection tax of 35 cents a ton for fertilizer sold or offered for sale in the State of Oklahoma. Rules and regulations for enforcement of this act may be prescribed. Section 8840.

South Carolina.—The fertilizer law of South Carolina is found in the Civil Code of South Carolina 1932, Sections 6363-6385. Section 6370 provides for an inspection tax of 25 cents a ton for fertilizer sold or offered for sale in the State of South Carolina. Section 6379 provides that every person selling fertilizer not labeled, branded, or tagged properly is liable to the State in an amount equal to the selling price of each package in a civil suit. The State has a lien on such fertilizer to recover the penalty which is enforced by a writ of attachment in accordance with chapter 25 (a court proceedings—see 6380). Section 6385. The

Board of Trustees of Clemson College may establish rules and regulations.

Texas.—The fertilizer law is found in Vernon's Civil Statutes of Texas, Articles 84-108, and Vernon's Penal Code of Texas, Articles 1709-1720. Article 97, Civil Statutes, and Article 1712, Penal Code, provide an inspection tax of 25 cents a ton on all fertilizer offered for sale in the State. Article 103, Civil Code, provides that any fertilizer sold, offered, or exposed for sale in violation of fertilizer law shall be liable for seizure at the instance of the State Chemist upon complaint before the county judge or justice of the peace. Injunctive remedy is also available. Article 104, Civil Code.

[fol. 135] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF FRED B. NORTHRUP—Filed October 26, 1942

FRED B. NORTHRUP, being duly sworn, deposes and says:

1. Affiant is Assistant Chief of the Agriculture Adjustment Agency, a part of the Agricultural Conservation and Adjustment Administration of the Department of Agriculture, an executive department of the United States, which agency is carrying out the powers conferred upon the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C. 590h et seq.), as authorized under the act of February 29, 1936 (16 U. S. C. 590m)

2. Movement of Agricultural Adjustment Agency superphosphate in the Southern Region.

(1) Since the bulk of the available phosphate rock is in the Florida fields, it moves in commercial channels mostly in the form of rock as far north as the New England States and as far west as Arkansas and Texas, where it is converted into superphosphate by the addition of sulphuric acid. Superphosphate is manufactured mainly along the eastern seaboard and at inland points east of a line running from the rock phosphate beds in Tennessee to those in Florida, or roughly, a line running northwest and southeast from Nashville to Tampa.

(2) The Southern Region consists of the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi,

Oklahoma, South Carolina, and Texas. In order to provide superphosphate for all States in the Southern Region, material must be moved north and west from the eastern producing areas in sufficient quantities to meet the requirements of States in which production capacity is not adequate to fill local needs. The current deduction rates, which are the amounts deducted from cooperating farmers' conservation payments when they choose to take super- [fol. 136] phosphate in lieu of cash, indicate the nature and extent of this movement. These deduction rates beginning July 1, 1942, are:

South Carolina	$16.10
Florida	16.10
Georgia	16.10
Alabama	16.70
Mississippi	17.50
Arkansas	20.20
Louisiana	21.20
Texas	22.00
Oklahoma	22.00

Were it not for this movement, the higher cost States to the west such as Louisiana, Texas, and Oklahoma, would not only have higher deduction rates, but would also be deprived of a fair share of available material.

(3) South Carolina and Florida are substantial suppliers of superphosphate but small users under the Agricultural Adjustment Agency program, while Georgia is a large user, but a large supplier as well.

State	Under Purchase Contract July 1 through December 31	Estimated Use July 1 through December 31
South Carolina	48,000	3,700
Florida	23,000	10,000
Georgia	142,700	47,646

(4) Because producing plants are nearer the source of phosphate rock, superphosphate available at Florida points is obtainable at the lowest cost f. o. b. plant. In order that farmers cooperating in the Agricultural Adjustment Agency program who reside at points considerably distant from the raw materials sources may not have to pay an excessive cost, in relation to what Florida farmers pay, this inexpen-

sive Florida superphosphate must absorb as much freight in the distribution scheme as possible. Thus, Florida material has been distributed during 1942 in Georgia, Mississippi, Louisiana, Texas, and Oklahoma in the Southern Region, as well as in many States to the north of, and outside of, this Region. Substantial quantities move from Florida into Tennessee and Kentucky in particular.
[fol. 137] (5) The Florida counties in which farmers have requested Agricultural Adjustment Agency superphosphate are in general nearer to Georgia sources of superphosphate than they are to Florida sources located at the rock deposits. This is indicated on the attached map (Exhibit A). No superphosphate manufactured elsewhere in Florida is available to the Agricultural Adjustment Agency in quantities or at times to make it useful in Florida. Although this involves to a limited extent a backhaul as far as the phosphate rock is concerned, it must be remembered that the only source of sulphur for the manufacture of sulphuric acid is Texas. Sulphur must, therefore, move as far or farther to reach Florida manufacturing points as it does in reaching Georgia manufacturing points.

(6) Superphosphate manufactured in South Carolina is divided among the North Central, East Central, and Southern Regions. Some portion of the amount allocated to the Southern Region is retained to fill South Carolina requirements, while the remainder moves across the border to Georgia counties which it is economical to supply on a comparative cost basis.

(7) With a certain amount of South Carolina and Florida material entering Georgia for the reasons outlined above, much superphosphate of Georgia manufacture is available for movement westward into Alabama, Mississippi, and points west of the Mississippi River, in which States the quantity available of local manufacture is less than is required in the respective States. Georgia material also moves economically into States in other Regions of the United States under the program of the Agricultural Adjustment Agency to the north.

(8) With a deduction rate of $16.10, Florida farmers share with Georgia and South Carolina farmers the lowest rate at which superphosphate is distributed by the Agricultural Adjustment Agency anywhere in the United States.

(9) Although the Agricultural Adjustment Agency has distributed superphosphate in various States since 1938, [fol. 138] Florida did not ask to participate in this distribution until the 1941 program year, long after the movement of superphosphate out of Florida plants had become established.

3. Sources and costs of Florida-produced superphosphate available to the Agricultural Adjustment Agency.

(1) The 1941 edition of the American Fertilizer Handbook, published by Ware Brothers Company, Philadelphia, Pennsylvania, is the most readily available source of information on the subject of fertilizer manufacturing. This publication lists, for Florida, 57 firms classified as "dry mixing plants—with mixing equipment and buying all ingredients." In general the Agricultural Adjustment Agency avoids purchasing superphosphate from mixing plants or other dealers who do not do their own manufacturing and must consequently charge higher prices than the producers. Only one is now under contract with the Agricultural Adjustment Agency.

(2) The American Fertilizer Handbook lists, for Florida, four firms which consist of "complete fertilizer plant—with acid chambers, superphosphate and mixing equipment" and three firms which consist of "superphosphate and mixing plants—with rock grinding, acidulating and mixing equipment (without acid chambers)." Of these seven superphosphate manufacturers, four have never offered to sell the Agricultural Adjustment Agency any material from these plants. Of the three remaining plants, one has been a source of supply in the past but is not currently furnishing us. This leaves two primary producers in Florida from which we are able to purchase superphosphate, plus an additional producer who is not listed in the Handbook because, so far as we know, it is selling its total supply of normal superphosphate to the Agricultural Adjustment Agency and thus has none for the commercial market.

(3) The Agricultural Adjustment Agency is currently under contract to take superphosphate from Florida plants [fol. 139] at Tampa, Nichols, Jacksonville, and Cottondale. The Cottondale supply is ext-emely limited while the Jack-

sonville material was not offered at an acceptable price until October 1942 and is available only for late fall delivery.

(4) Under the Agricultural Adjustment Agency distribution system, Florida farmers have the amount of $16.10 deducted from their conservation payments for every ton of 20 per cent superphosphate that is taken in lieu of cash payment. The value of Agricultural Adjustment Agency superphosphate in Florida that is thus established compares favorably with the current commercial price of the same material available for sale in Florida by Florida manufacturers of not less than $20.00.

(5) The Agricultural Adjustment Agency distribution of superphosphate at this low comparative cost to the farmer is not in competition with commercial distribution of similar material because it is used to fertilize crops which would not otherwise be fertilized. The Agricultural Adjustment Agency has thus, independent of the commercial fertilizer industry but using commercial sources of supply, opened up a new field of fertilizer use. Such distribution is not either in competition with or in conjunction with the regular business of superphosphate producers.

(S.) Fred B. Northrup, Assistant Chief.

Duly sworn to by Fred B. Northrup. Jurat omitted in printing.

(Here follows 1 photolithograph, side folio 140)

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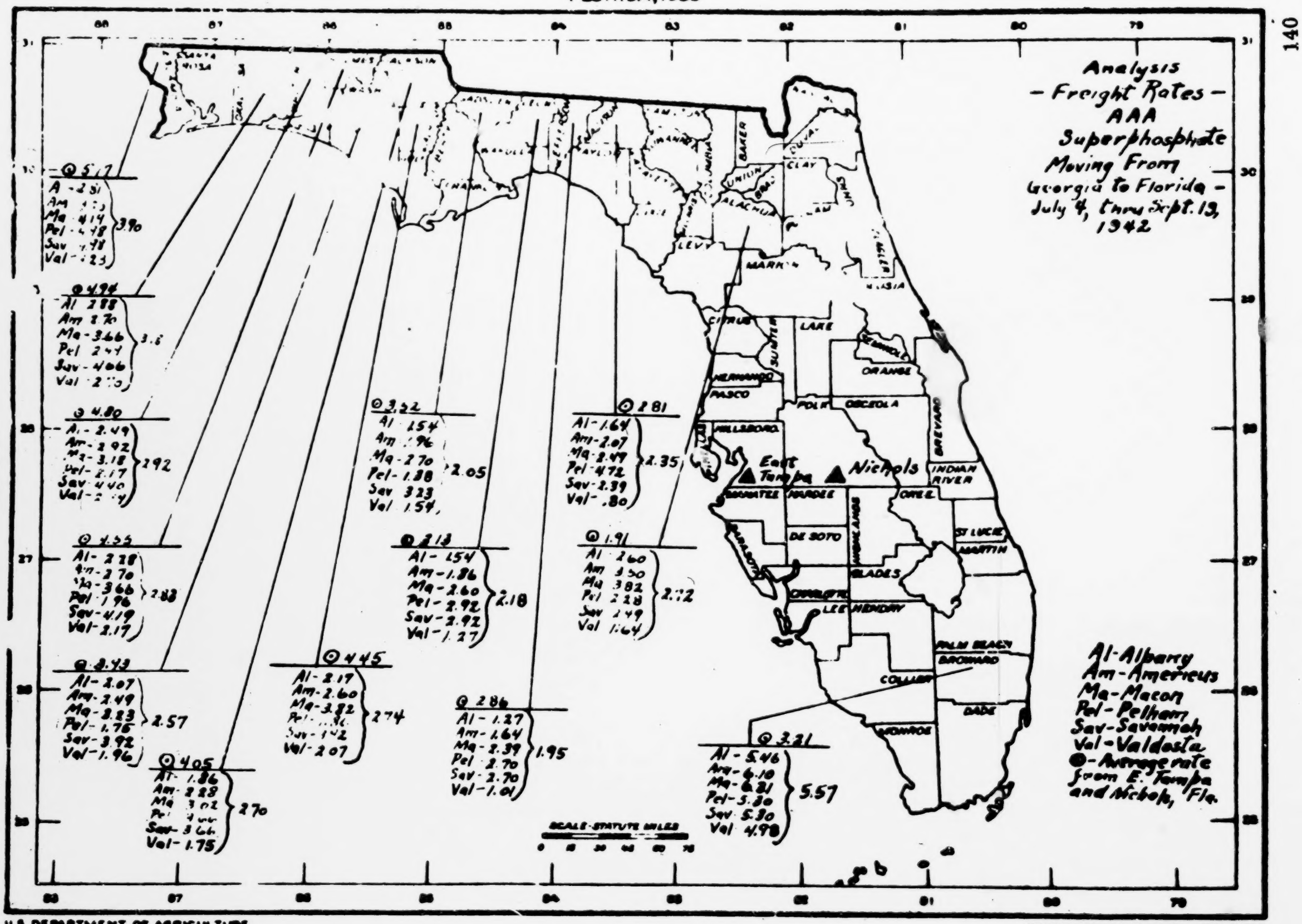
EXHIBIT A

FLORIDA, 1933



U.S. DEPARTMENT OF AGRICULTURE

BUREAU OF AGRICULTURAL ECONOMICS

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[fol. 141] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. J. TAYLOR—October 26, 1942

State of Florida, Agricultural Department, Chemical Division

J. J. Taylor, State Chemist, Tallahassee

STATE OF FLORIDA,
County of Leon:

Before me, the undersigned, personally came J. J. Taylor, who being first duly sworn, on oath says that he is the duly appointed and qualified State Chemist of the State of Florida; and as such is charged with the duty of analyzing samples of seeds under the Florida Seed Law; and that between the dates of January 8 and June 20, 1942, sixteen samples of peanuts from the G. F. A. Peanut Association, Camilla, Georgia (southern branch AAA) were sent in by inspectors of the State of Florida and analyzed in the Seed Laboratory; that out of the 16 samples analyzed eleven were illegal, failing to meet their guarantee of germination. Attached hereto and made a specific part of this affidavit is a detailed report of the results of said analyses of the foregoing sixteen samples, showing name of the retailer, date received, guaranteed germination, and the actual percentage of germination found by virtue of analysis in the Seed Laboratory, as appears from the official records in my office as State Chemist of Florida.

(S.) J. J. Taylor, State Chemist.

Duly sworn to by J. J. Taylor. Jurat omitted in printing.

[fol. 142] Detailed Report of Analyses of Samples of Peanuts, Made a Part of the Foregoing Affidavit

Retailer	Date Received	Germination Guaranteed %	Germination Found %
C. W. Rogers Co. Live Oak, Florida	1- 8-42	92.00	58.50*
W. R. Carter Lake City, Florida	2-26-42	90.00	88.75
W. R. Carter Lake City, Florida	2-26-42	92.00	88.25
Seminole Stores, Inc. Ocala, Florida	5- 6-42	88.00	77.50*
C. W. Rogers Co. Live Oak, Florida	6- 6-42	88.00	74.50*
Pendleton Grain and Hatchery Tallahassee, Florida	6- 8-42	85.00	88.75
Suber and Johnson Quincy, Florida	6-29-42	90.00	69.50*
Greenwood Products Co. High Springs, Florida	6-10-42	88.00	65.75*
Greenwood Products Co. High Springs, Florida	6-10-42	88.00	64.75*
Greenwood Products Co. High Springs, Florida	6-10-42	88.00	55.75*
Futch Produce Company Live Oak, Florida	6-12-42	88.00	53.375*
Monticello Milling Co. Monticello, Florida	6-13-42	88.00	54.50*
Seminole Stores, Inc. Ocala, Florida	6-13-42	88.00	60.25*
Monticello Milling Co. Monticello, Florida	6-16-42	85.00	87.00
Monticello Milling Co. Monticello, Florida	6-16-42	88.00	66.00*
Hutchinson & Woodbery Tallahassee, Florida	6-20-42	90.00	87.25

* Illegal.

[fol. 143] In United States District Court

Affidavit of J. J. Taylor—Filed October 26, 1942

State of Florida, Agricultural Department, Chemical Division

J. J. Taylor, State Chemist, Tallahassee

State of Florida,
County of Leon:

Before me, the undersigned, personally came J. J. Taylor, who being first duly sworn, on oath says that he is the duly appointed and qualified State Chemist of the State of Florida; and as such is charged with the duty of analyzing samples of commercial fertilizer and fertilizer materials under the Commercial Fertilizer Law of Florida; and that

during 1940, 1941 and 1942 there were 38 companies manufacturing fertilizer or fertilizer material outside the state of Florida who shipped their goods into the state; that official samples representing fertilizer or fertilizer material from fifteen of the 38 companies showed deficiencies in one or more elements of plant food; that a total of 48 deficiencies were found in 925 samples analyzed during the above period from the 38 companies making the shipments.

(S.) J. J. Taylor, State Chemist.

Duly sworn to by J. J. Taylor. Jurat omitted in printing.

[fol. 144] In United States District Court

Affidavit of V. L. Fuqua—Filed October 26, 1942

V. L. Fuqua, being duly sworn, makes the following statements:

1. Affiant is Superintendent of the Division of Food, Fertilizers, and Dairies, of the State of Tennessee Department of Agriculture and Tennessee State Chemist.

(a) The enforcement of the Tennessee Commercial Fertilizer Law is delegated to the affiant by the Commissioner of Agriculture who is the enforcement official designated by above mentioned law.

(b) Section 5 of the Tennessee Commercial Fertilizer Law reads as follows: "Be it further enacted, That all manufacturers and manipulators, or agents representing them, who have registered their brands in compliance with Section 1 of this Act, shall forward to the Commissioner of Agriculture a request for tax tags, stating that said tags are to be used upon brands of commercial fertilizers and fertilizer materials registered in accordance with this Act, and said request shall be accompanied with the sum of 50 cents per ton as an inspection fee; whereupon it shall be the duty of the Commissioner of Agriculture to issue tags to parties applying, who shall attach a tag to each bag, barrel or package thereof, which, when attached to said package, shall be prima facie evidence that the seller has complied with the requirements of this Act. Said tags shall be issued for each fiscal year — shall be comprised between the dates of July 1st, — inclusive.

(c) For the past several years the Agricultural Adjust-
[fol. 145] ment Agency has been selling fertilizer in the State of Tennessee without complying with the Tennessee Commercial Fertilizer Law.

(d) A member of the Agricultural Adjustment Agency has informed us in writing that fertilizer purchased in Tennessee could be legally tagged with inspection tax tags but that any product shipped into the State would not be tagged and that according to their attorney some would not be required to be tagged by any State Law.

(e) An examination of numerous shipments reveals that the majority of the lots examined are shipped interstate when in actuality the State of Tennessee is a larger production area.

(f) The purpose of the Tennessee Commercial Fertilizer Law is to protect the consumer against inferior products and the affiant feels that the present proposed method of sampling of the Agricultural Adjustment Agency's distributed fertilizer is not sufficient to accomplish the purposes of the Act which can be shown by our laboratory analysis number 16426 on a sample of Superphosphate distributed by the Agricultural Adjustment Agency which was guaranteed to contain 20% of available phosphoric acid whereas our analysis shows the sample to contain only 18.3% of available phosphoric acid.

(Signed) V. L. Fuqua.

Duly sworn to by V. L. Fuqua. Jurat omitted in printing.

[fol. 146] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. W. WOODSIDE—Filed October 26, 1942

STATE OF NORTH CAROLINA,
City of Raleigh,
County of Wake:

J. W. Woodside, being duly sworn according to law, deposes and says: That as director of the Seed Laboratory division of the North Carolina Department of Agriculture, located in the City of Raleigh and the County of Wake; that

the facts herein set forth are true and correct to the best of his knowledge, information and belief:

Report of Laboratory Germination Tests and Field Studies on the Carolina Runner Peanuts Shipped into North Carolina by the GFA Peanut Association of Camilla, Georgia

The following is the result of germination tests made in the Seed Laboratory on samples drawn from the Carolina Runner Peanuts shipped into this State by the GFA Peanut Association of Camilla, Georgia, ownership of which is claimed by the Commodity Credit Corporation:

Test No.	Inspector	Sample Collected At	Date Sampled	Date of Test	Germination
503360	E. J. Harrington	Williamston Storage Co. Williamston, N. C.	Apr. 24, 1942	Apr. 29, 1942 & May 12, 1942	37%
503361	E. J. Harrington	M. C. Braswell Co. Battleboro, N. C.	Apr. 22, 1942	Apr. 29, 1942 & May 12	58
503473	W. H. Darst	K. T. Knight Senator W. G. Clark's Farm, Tarboro, N. C.	May 13, 1942	May 14, 1942	37.5
503474	W. H. Darst	K. T. Knight Senator W. G. Clark's Farm, Tarboro, N. C.	May 13, 1942	May 14, 1942	40.5
503475	W. H. Darst	J. C. Powell C. A. Office Tarboro, N. C.	May 13, 1942	May 14, 1942	42.5
[fol. 147]					
503476	W. H. Darst	D. E. Allsbrook Tarboro, N. C., RFD	May 13, 1942	May 14, 1942	38
503478	W. H. Darst	Sou. Cotton Oil Whse. Tarboro, N. C.	May 13, 1942	May 14, 1942	39
503485	J. S. James	Robeson FCX Lumberton, N. C.	May 14, 1942	May 19, 1942	50.5
503486	J. S. James	Clarence Wiggins Clinton, N. C.	May 15, 1942	May 19, 1942	50
503489	J. S. James	Sou. Cotton Oil Co. Fayetteville, N. C.	May 15, 1942	May 19, 1942	40.5
503502	C. H. Lutterloh	Sou. Cotton Oil Co. Goldsboro, N. C.	May 20, 1942	May 22, 1942	46
503503	C. H. Lutterloh	Blount-Midyette Co. for Co. Agent: W. M. McGabey Washington, N. C.	May 19, 1942	May 22, 1942	56
503527	J. S. James	Atlantic Coast Line R. R. Whse., Greenville, N. C.	May 21, 1942	May 22, 1942	62
503528	J. S. James	Atlantic Coast Line R. R. Whse., Greenville, N. C.	May 21, 1942	May 22, 1942	52
503529	J. S. James	Craven Mutual Exchange New Bern, N. C.	May 20, 1942	May 23, 1942	61.5
503532	J. S. James	Farmville Oil & Fert. Co. Farmville, N. C.	May 21, 1942	May 23, 1942	48

Inspectors were sent to all points where we had information that these peanuts were stored. Some of these peanuts were probably distributed from other points, but since the agency distributing these seed was not cooperating with us, we were not able to get this information. All of these peanuts were labeled showing 88 per cent germination.

The average of these 16 tests is 47.5% germination, the lowest result being 37% and the highest 62%. The highest germination obtained was 26% below the guarantee. A check has just been completed on the peanuts submitted to the Laboratory during the past season by farmers and seed dealers of this State. The lowest of these tests was 34% and the highest 98%, the average being 76% or 28.5% higher than the seed shipped to us from other states. If one-third of the peanuts that were tested by this Laboratory that were produced in this State were discarded, the remainder could be classified as good seed stock.

[fol. 148] We have found little evidence to support the claim of the Agricultural Adjustment Agency and others in control of this program that machine shelling of these peanuts reduced the stand. All of the five samples collected by Mr. W. H. Darst, Seed Marketing Specialist, N. C. Department of Agriculture, except the one taken from the Southern Cotton Oil Company Warehouse at Tarboro, (No. 503478) were machine shelled. This sample was hand shelled in the Seed Laboratory. There was no marked difference in the germination of these samples. The low germination in this group was 37.5% and the high was 42.5%. The hand shelled sample germinated 39%. All other samples were hand shelled in the Seed Laboratory. Mr. R. L. Little of Grimesland, Pitt County, told me that he hand shelled enough*t* to plant twenty-five acres. His stand was so poor that he plowed the peanuts up and was substituting soybeans. At the same time that Mr. Darst drew samples of the Carolina Runner Peanuts the Southern Cotton Oil Company was machine shelling a lot of local seed for Mr. J. F. Walston of Walstonburg. He secured a sample of these peanuts and they germinated 91%.

Mr. K. T. Knight of Tarboro, North Carolina, farming for State Senator W. G. Clark, failed to get a stand after planting twice. Mr. D. E. Allsbrook of Tarboro, R. F. D.,

failed to get a stand after planting GFA stock twice. Senator Clark stated to Mr. Darst and me that Mr. Allsbrook planted local stock the third time and secured a satisfactory stand.

Mr. Joe P. Bunn of Tarboro planted 15 acres of local peanuts and secured a satisfactory stand. At the same time he planted 5 acres of Carolina Runner supplied by the AAA and got about a 45% stand. He replanted this 5 acres with local seed and obtained satisfactory stand.

Mr. N. T. Parker of Macclesfield planted 12 acres of Carolina Runner Peanuts supplied by the AAA. Mr. Parker stated to Mr. Darst and me that his stand was about 50%. He has plowed this up and substituted soybeans. This cost Mr. Parker $100.00.

Mr. Lorenza Locke of Enfield planted 49 bags of local [fol. 149] peanuts and obtained a satisfactory stand. He also planted two bags of Carolina Runner Peanuts, distributed by the AAA, and the stand was so poor that he plowed them up.

The Assistant County Agent in Pitt County told Mr. Darst and me that they had 500 farmers who had planted these peanuts. They recently requested their farmers to report to them the results of their planting. Only three of those who replied reported good stands. After it was apparent in Pitt County that the farmers were not going to get a stand from the seed first furnished to them, some peanuts that had been produced in the vicinity of Rocky Mount and stored there by the Peanut Growers Cooperative of Franklin, Virginia, were brought to Greenville and distributed to the farmers. The County Agent's office informed us that up to June 3 they had received no complaints from these seed. These peanuts in Rocky Mount had been sampled and tested by this Department and only the lots having good germination were used for seed. No tags were placed on these peanuts, therefore the Department received no fees for this service.

J. S. James, Seed Inspector of this Department, reported that H. J. Harding farming near Goldsboro, planted 12 acres with White Spanish peanuts furnished to him by the Agricultural Adjustment Agency and secured about a 50% stand. He replanted with Carolina Runners furnished by the same agency and secured not even a 25 per cent stand. S. K. Smith of Dudley (Wayne County) planted 2 acres of

Carolina Runner peanuts and secured a 50 per cent stand.

Mr. James reported that stands in Cumberland, Robeson and Sampson were high enough to leave and the farmers were not complaining. It has been my observation that in cases where the farmers secured more than a 60 per cent stand that they did not complain. This is accounted for by the fact that many of these peanuts were planted at 6 and 8 inch intervals. A plant each 12 inches is considered a satisfactory stand.

I checked conditions in the Enfield and Halifax sections of [fol. 150] Halifax County. Since this section is in the old peanut belt, few of the Carolina Runner Peanuts were sent to this County. Holiday and Whitaker of Enfield planted about 600 acres of peanuts of their own seed and obtained a satisfactory stand. Mr. N. W. Perry of Halifax planted 150 acres of local seed and secured satisfactory results. Mr. M. D. Overstreet of Enfield obtained a good stand by using his own seed. Mr. Ernest Baines of Enfield planted 185 acres of his own seed and told me he would not have to replant more than two acres.

V[illegible]te Brothers and J. P. Neville of Enfield and the Stedman Store Company of Halifax reported to me that they had supplied farmers with local grown peanuts for seed and the results were satisfactory. They reported that no complaints had been made to them by farmers.

In conclusion, the Carolina Runner Peanuts distributed by the Agricultural Adjustment Agency to farmers in this State to plant for oil purposes were of very poor seed quality. The highest germination obtained was 26 per cent below the guarantee. The proper precautions had not been taken by this agency to determine whether these peanuts would germinate. If the AAA cooperated with the N. C. Department of Agriculture, the condition of the seed could have been determined before the farmers planted. From the information that we now have, the AAA did not have any tests made other than those made by the GFA Peanut Association of Camilla, Georgia, the Agency who sold the seed to AAA. Since the AAA refuses to pay the fees applicable to these seed, it tends to break down the system which this Department operates under and creates much confusion among legitimate commercial operators. Had these peanuts been properly inspected and tested, it would have saved North Carolina farmers many thousands of dol-

lars and would have insured more peanut oil this year and would have aided rather than hindered the war effort.

It should not be overlooked that from the soybeans distributed to farmers in this Program there have been no complaints called to our attention. The agency who supplied the AAA with these soybeans in North Carolina had them tested in North Carolina Seed Laboratory before delivery. [fol. 151] No revenue was received for this service since their soybeans were sold without North Carolina tags.

(S.) J. W. Woodside, Botanist, Seed Laboratory.

Duly sworn to by J. W. Woodside. Jurat omitted in printing.

[fols. 152-153] In United States District Court

Stipulation Waiving Time for Entry of Summary Judgment—Filed October 26, 1942

The parties by counsel agree that the ten days notice requirement of Rule 56 (c) of the Federal Rules of Civil Procedure before the entry of summary judgment on the formal oral application of plaintiff made therefor at the hearing on October 26, 1942 is waived, the Court having indicated its desire to enter such judgment without awaiting the time necessary for this notice period to elapse if the parties would waive said notice requirement.

Dated October 26, A. D. 1942.

J. Tom Watson, Attorney General of the State of Florida, Attorney for Defendants. Wm. C. Pierce, Atty. for State Dept. of Agriculture. G. E. Hoffman, United States Attorney, Attorney for Plaintiff.

[fol. 154] In United States District Court

Findings of Fact and Conclusions of Law—Filed October 26, 1942

This cause having come on to be heard on plaintiff's application for a preliminary injunction, and at the hearing thereof plaintiff having made formal oral motion for summary judgment in its favor on all the pleadings and affidavits filed herein, and the ten days notice requirement for

said motion for summary judgment having been waived by written stipulation, the Court hereby files its findings of fact and conclusions of law as follows:

The Court finds:

1. This is a civil action brought by the United States of America as plaintiff, of which this Court has jurisdiction under Section 24 (1) of the Judicial Code, as amended (28 U. S. C. Section 41 (1)). This action is brought by direction of the Attorney General.

2. The defendant Nathan Mayo is a resident, citizen, and inhabitant of the State of Florida and of the Northern District thereof. He is the Commissioner of Agriculture of the State of Florida. The defendant, Roy Hutchinson, is an Inspector in the Florida State Department of Agriculture, Inspection Bureau. He is a resident, citizen, and inhabitant of the State of Florida and the Northern District thereof.

3. The United States of America is engaged in the distribution of fertilizer in the State of Florida. This distribution is part of a soil conservation program of the United States designed to preserve and improve the fertility of the soil of the United States and to accomplish the other purposes enumerated in Section 7 of the Soil Conservation and Domestic Allotment Act (16 U. S. C., Sec. 590g) under the authority of which and of other Federal statutes said program is being carried on. Such distribution is necessary as a part of such program. The particulars of this program are set forth in the affidavit of Joseph L. Orr, sworn [fol. 155] to September 17, 1942, filed herein. The Court finds the facts to be as stated in the affidavits of Joseph L. Orr, sworn to September 17, 1942, William G. Finn (No. 1) sworn to October 17, 1942, William G. Finn (No. 2) sworn to October 17, 1942, Fred B. Northrup, sworn to October 19, 1942, Fred B. Northrup, sworn to October 23, 1942, filed herein, and said affidavits are hereby incorporated by reference in this finding. Certain superphosphate fertilizer involved in said program is now in the State of Florida and is owned by the United States. As part of the said program, superphosphate fertilizer is being distributed in the State of Florida to facilitate the planting therein, not later than on or about October 15, 1942, of certain soil conserv-

ing crops, notably winter legumes, and of certain other crops continuously thereafter, designed to increase the nitrogen content of the soil and thereby to compensate for the shortage for fertilizer purposes of chemical nitrogen due to its use in munitions required by the existing war emergency. If nitrogen is supplied in this way it will leave available for war purposes nitrogen which otherwise would have to be used for agricultural purposes unless there is to be a corresponding decrease in the production of agricultural products. It was necessary that part of said program proceed without delay to permit completion of the distribution of said superphosphate fertilizer prior to October 15, 1942, and that the rest of said program proceed continuously and with all dispatch thereafter. The carrying out of the said program is a part of the sovereign functions of the United States for governmental purposes.

4. Under the purported authority of the Florida Commercial Fertilizer Law, the defendants are interfering with and obstructing and threatening to interfere with and obstruct the United States in its exercise of its sovereign functions as aforesaid in carrying out its program for the distribution of fertilizer in the State of Florida.

5. Said interference and obstruction consists of the issuance of and threats to enforce "stop sales notices" prohibiting the distribution of said fertilizer in the State of Florida and seizures of and threats to seize and sell at public sale all fertilizer, the property of the United States, shipped into [fol. 156] the State of Florida. Said Florida Commercial Fertilizer Law, and any other statutes on which defendants purport to rely, may not be construed and were not intended to apply to property of and transactions by the United States of America, but if so construed said statutes are unconstitutional, in violation of the Constitution of the United States, and beyond the power of the State of Florida. As so construed said statutes violate Article VI, Clause 2 (the supremacy Clause) of the Constitution of the United States and conflict with the acts of Congress providing for the aforesaid soil conservation program and for the functioning and carrying out thereof and for the functioning of the Department of Agriculture of the United States and for the acquisition and disposition of the fertilizer here involved.

6. Said "stop-sale notices" and seizures are wholly void. The purported ground on which said orders have been issued and said seizures and threats made is that provisions of the said Florida Commercial Fertilizer Law have not been complied with. Said provisions may not be construed to apply to the fertilizer and the program for its distribution herein involved and if so construed would violate Article VI, Clause 2, of the Constitution of the United States and conflict with the Acts of Congress referred to in the foregoing paragraph of these findings.

7. The United States and its property and transactions, under the Constitution of the United States, are immune from the Florida Commercial Fertilizer Law and any other statutes on which defendants purport to rely, as well as outside their intended scope, and the police power of the State of Florida under which such legislation was enacted does not under the Constitution of the United States extend to the United States or to its property and transactions.

8. Notwithstanding the foregoing defendants have issued such "stop sale notices" as aforesaid and are enforcing and threatening to enforce the same, and are also threatening to seize and sell at public sale, in purported compliance [fol. 157] with the Florida Commercial Fertilizer Law and other statutes all fertilizer, the property of the United States, shipped into the State of Florida.

Numerous persons utilized by the United States acting on its behalf in the execution of its program for the distribution of said fertilizer in the State of Florida are fearful of the said "stop sale notices" and seizures and threats and unless the enforcement of the "stop sale notices" and the seizures and the carrying out of the said threats be enjoined, said persons will decline to execute the laws of the United States and the carrying out of the program of the United States will be frustrated.

9. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate and undisturbed possession of a certain lot of 19% superphosphate fertilizer, consisting of 54.15 tons, more or less.

Said lot of fertilizer is part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

10. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. A1s-26963, entered into by the United States, through its Department of Agriculture, with Mutual Fertilizer Company, Savannah, Georgia, for the furnishing to the United States by said Company of 1,500 tons of said fertilizer. By direction of the United States and in the execution of its program more fully described above, said property was being shipped from Savannah, Georgia, to Monticello, Florida, via the Seaboard Air Line, consigned to Jefferson County Agricultural Conservation Association, an instrumentality and agency of the United States and acting on its behalf. Said shipment was under Government Bill of Lading No. 2621276, in which the said Seaboard Air Line acknowledged receipt of said fertilizer, therein described and referred to in the language of said Government Bill of Lading as "the public property hereinafter described."

11. On September 10, 1942, the following telegram was sent by defendant Nathan Mayo to the Administrative Officer of the said Jefferson County Agricultural Conservation Association:

[fol. 158] September 10, 1942.

Franklin W. Smith, Administrative officer, Jefferson County Agricultural Association, Monticello, Florida

This is your official notice that car of superphosphate consigned to you by Mutual Fertilizer Company, Savannah, Georgia, is under legal stop sale notice as provided by Florida Fertilizer Law account not being registered and tagged. Am wiring manufacture- to arrange registration and tagging immediately so goods may be released.

Nathan Mayo, Commissioner of Agriculture.

Charge to Inspection Bureau
Rush

On September 11, 1942, defendant Roy Hutchinson issued a "stop sale notice," directing Franklin W. Smith, Administrative Officer of the Jefferson County Agricultural Conservation Association, as aforesaid an instrumentality and agency of the United States and acting on its behalf, to withdraw from "sale" and hold subject to further instructions the said lot of superphosphate fertilizer. Said

"stop sale notice" is one of the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

12. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate pos-ession of three certain lots of 20% superphosphate fertilizer consisting of 50 tons each, more or less. Said lots of fertilizer are part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

13. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. A1s-27003, entered into by the United States, through its Department of Agriculture, with Georgia Fertilizer Company, Valdosta, Georgia, for the furnishing to the United States by said Company of 5,000 tons of said fertilizer. By direction of the United States said lots were being shipped by rail from Valdosta, Georgia, consigned respectively to the Agricultural Conservation Associations of Walton County, Florida; Gadsden County, Florida; and Madison County, Florida at their respective offices in DeFuniak Springs, Florida; Quincy, Florida; and Madison, Florida. Each of [fol. 159] the three said County Agricultural Conservation Associations are instrumentalities and agencies of the United States acting on its behalf. Each of the three said shipments was under a Government Bill of Lading like that referred to and described in paragraph 10 hereof and each was described therein and referred to as "the public property hereinafter described."

14. On or about September 11, 1942, defendant Nathan Mayo, and his subordinates, purporting to act as inspectors of the Florida State Department of Agriculture, Inspection Bureau, under the purported authority of the Florida Commercial Fertilizer Law issued "stop sale notices" directing that the three said lots be withdrawn from "sale" and held subject to further instructions. These "stop sale notices" are among the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

15. In the carrying out of the program of the United States time is of the essence, due to the fact that the planting season in the State of Florida for certain soil conserving crops with which the superphosphate fertilizer herein referred to was to be used would expire on or about October

15, 1942, and due to the continuing and persistent need therefor on other crops as shown in the affidavit of William G. Finn (No. 1), sworn to October 17, 1942, and due to the acute necessity for obtaining nitrogen from the said crops to replace chemical nitrogen unavailable for fertilizer purposes due to its use in munitions required by the existing war emergency. The threatened injury to the United States is imminent and irreparable, and the United States has no adequate remedy at law nor any remedy save injunction by this Court.

The Court files the following conclusions of law:

1. The Court has jurisdiction of the subject matter and parties to plaintiff's complaint, but not of the defendants' counterclaim.

2. Apart from plaintiff's right to a final judgment as a matter of law, plaintiff is entitled to a preliminary injunction continuing in effect the terms of the temporary restraining order.

3. There is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law as prayed in the complaint.

[fol. 160] 4. The motion of defendants to dismiss the complaint should be denied.

5. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction should be granted, and the defendants' motion to add parties should accordingly be denied.

6. The property and transactions of the United States and its agencies referred to in the Findings of Fact are under the Constitution of the United States immune from and not subject to the application of the Florida Commercial Fertilizer Law relied on by defendants.

7. The application by defendants of the Florida Commercial Fertilizer Law to the property and transactions of the United States as described in the Findings of Fact is in violation of the Constitution of the United States, and beyond the power of the defendants as officers of the State of Florida.

8. The distribution of the fertilizer and fertilizer materials by the United States and its agencies as described in the Findings of Fact is, under the Constitution of the

United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida Commercial Fertilizer Law.

9. The legal defenses set forth in defendants' answer should each be overruled.

Let the foregoing Findings of Fact and Conclusions of Law be filed, and judgment be entered accordingly.

Dated October 26, 1942.

(S.) Leon McCord, United States Circuit Judge;
Augustine V. Long, United States District Judge.

Dissenting: (S.) Curtis L. Waller, United States District Judge.

[fol. 161] IN UNITED STATES DISTRICT COURT

ORDER ON MOTIONS AND FINAL DECREE—Filed October 26, 1942

This cause came on to be heard and was argued by counsel and on consideration thereof, the Court having filed its Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed as follows:

1. The motion of defendants to dismiss the complaint is denied.

2. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction is granted; and defendants' motion to add parties is accordingly denied.

3. The application of plaintiff for a preliminary injunction is granted.

4. The motion of plaintiff for summary judgment enjoining the defendants as prayed in the complaint and for a final permanent injunction in the terms of the temporary restraining order heretofore issued is granted.

And it is Further Ordered, Adjudged and Decreed as follows:

5. The defendants above named and each of them, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them are

hereby permanently enjoined from: Taking any steps to enforce "stop sale notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribution of fertilizer and from threatening to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer.

6. The defendants are hereby required to vacate and set aside the "stop sale notices" and seizures which are the subject matter of this action.

7. The Court reserves jurisdiction of this cause and of the parties for the purpose of enforcement of this decree and for the granting of such further relief as may be appropriate.

Dated October 26, 1942.

Leon McCord, United States Circuit Judge; Augustine V. Long, United States District Judge.

Dissenting: Curtis L. Waller, United States District Judge.

[fol. 162] IN UNITED STATES DISTRICT COURT

DISSENTING OPINION BY DISTRICT JUDGE WALLER—Filed October 28, 1942

The Florida Fertilizer Inspection Statute is a valid exercise of the police power of the State to protect the farmers against the sale of inferior or fraudulent fertilizer.

The Federal Government has enacted no statute for the protection of the purchasers of fertilizer in Florida. Under the Constitution all power not granted to the Federal Government was reserved to the States. Moreover, the power of the State to levy a reasonable inspection fee is expressly provided in Section 10 of Article I:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, *except*

what may be absolutely necessary for executing it's inspecttion Laws: * * *" (Italics supplied.)

The right of the State to levy an inspection tax is not merely implied but expressly conferred by the Constitution.

The Congress could not take the power away from the State to levy a reasonable inspection tax. If Congress cannot do so, it follows that the Department of Agriculture cannot do so.

[fol. 163] The State is supreme and sovereign in the exercise of its reserved powers. The right to levy an inspection tax is expressly reserved in the State. Therefore, the S'ate is supreme in the exercise of this power.

Congress is supreme in the powers delegated to it, but the right to regulate the inspection of fertilizer or to regulate agriculture was not expressly delegated to the Congress. Whatever power Congress has to regulate agriculture is under the general welfare clause of the Constitution, but the promotion of the general welfare does not call for the striking down of a constitutional power of a State. It is more important that the relations between the State and Federal Governments under our dual system be preserved and left uninfringed than refraining from deducting from a gift to the farmer a reasonable inspection fee levied by the State under the power of the Federal Constitution.

I agree with the majority Court that the State was probably without power to seize property of the United States, to wit, the fertilizer in question, but I consider the seizure as purely procedural. The substantive question is whether or not the Department of Agriculture has the right to procure fertilizer for farmers and thereby permit them to escape the payment of an inspection tax, whereas the vast majority of farmers who are not the recipients of this gratuity will have to pay an inspection tax. It is idle to say that this inspection fee is a burden upon the Federal Government for the reason that since it is a gratuity the Government can, without loss to itself, deduct the amount of the inspection tax from the amount of the benefit to be paid to the farmer, of which the fertilizer distribution is but an advancement.

[fol. 164] I do not consider that the inspection fee is a tax, but if it be a tax it is a non-discriminatory tax and compels no burden to be cast upon the Federal Government.

If it be a tax there is no implication that Congress intended to grant immunity from the payment of the tax. There is no immunity from taxation granted in the Federal Constitution. Immunity proceeds only from the express language of a statute or implications therein. An implied immunity can only be ascertained from the intention of Congress, and the nature and effect of the burden placed upon the Government. See Graves vs. New York, ex Rel. O'Keefe, 306 U. S. 468; State of Alabama vs. King & Boozer, 314 U. S. 1; Curry vs. United States, 314 U. S. 14.

In the case of Graves vs. New York, ex rel. O'Keefe, supra, the Court, referring to the decision in the case of Helvering vs. Gerhardt, 304 U. S. 405, said:

"* * * it was there pointed out that the implied immunity of one government and its agencies from taxation by the other *should,* as a principle of constitutional construction, *be narrowly restricted.* For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, * * *" (*Italics* supplied.)

It seems to me that in view of the power of the State expressly conferred by the Federal Constitution to levy an inspection tax, it could not be implied, in the absence of express language in the statute, that Congress intended to exempt the fertilizer in question from the provisions of the valid inspection statute of the State of Florida.

Entertaining the above views I am forced to dissent from the findings of fact and conclusions of law of the majority of the Court.

October 28, 1942.

(S.) Curtis L. Waller, United States District Judge.

[fol. 165] IN UNITED STATES DISTRICT COURT

OPINION—Filed October 30, 1942

Attorneys for Plaintiff:

Francis M. Shea, Assistant Attorney General; George Earl Hoffman, United States Attorney; William B. Watson, Jr., Assistant United States Attorney.

Sidney J. Kaplan, Special Assistant to the Attorney General; Martin Norr, Attorney, Department of Justice.

Attorneys for Defendants:

J. Tom Watson, Attorney General of Florida. Fred M. Burns, Assistant Attorney General of Florida. H. E. Carter, of Tallahassee, Florida. William C. Pierce, of Tampa, Florida.

Before McCord, Circuit Judge, and Long and Waller, District Judges

LONG, District Judge:

The United States is engaged in the distribution of fertilizer to the farmers of Florida and in other States as a part of a soil conserving program developed by the government to carry out the purposes of the Soil Conservation and Domestic Allotment Act. The outline of the program is set out in the complaint filed herein, and the attached affidavits. The fertilizer is purchased by the government from commercial manufacturers, inspected by the government as to suitability for the purpose for which it is to be used. It is then shipped under government bills-of-lading to county agricultural conservation associations for the purpose of delivery to the farmers. This distribution is for the purpose of facilitating the planting of such nitrogen-bearing crops as would increase the nitrogen content of the soil and thereby compensate for the critical shortage of [fol. 166] nitrogen due to its use in munitions required by the war emergency.

Nitrogen, being unavailable for fertilizer purposes, can only be supplied by these nitrogen growing crops. It, therefore, becomes a question of either the diversion of nitrogen from war needs, or a reduction of the agricultural production, both of which are necessary because of these require-

ments of the armed forces, the needs of our allies, and the domestic demands. The program is nation wide. The action of the defendants complained of prior to the issuance of the temporary restraining order, had halted the distribution of this very widely needed fertilizer.

The Florida Commercial Fertilizer Law, Section 576.11, requires an inspection fee to be paid by every manufacturer or agent of commercial fertilizer. Section 576.13 refers to manufacturer and importer of, or dealer in fertilizers. Since the rule is that the general words of a statute do not include the government or affect its rights unless the construction be clear and undisputable upon the text of the act (Nardone v. United States, 302 U. S. 379; United States v. Fox, 94 U. S. 315; United States v. Cooper Corporation, 312 U. S. 600), the conclusion could be reached that by this statute of Florida the legislature had no intention of affecting the property of the Federal Government.

There is abundant authority for the holding that a State under the exercise of the police power may pass regulatory acts providing for inspection fees, but that is not the question here. The one and only question to be determined is whether or not Federal transactions are immune from such State regulations. It seems to be well settled as a matter of law that the police power of a State does not extend to the United States, its property or transactions, and that [fol. 167] such Federal property and transactions are immune from State regulations, and State statutes are invalid under the Supremacy Clause of the Constitution (Article VI, Clause 2).

Ohio v. Thomas, 173 U. S. 276 (cited with approval in Stewart & Company v. Sadrakula, 309 U. S. 94) Arizona v. California, 283 U. S. 423, the United States may perform its functions without conforming to the police regulations of a State. Johnson v. Maryland, 254 U. S. 51; Hunt v. United States, 278 U. S. 96; Johnson v. Maryland, 254 U. S. 51; Chalk v. United States, 114 F. (2d) 207 (C. C. A. 4th) 213 U. S. 679; Posey v. Tennessee Valley Authority, 93 F. (2d) 726 (C. C. A. 5th);

The authority of State laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the State law would handicap efforts to carry out the plans of the United States, the State enactment must, of course, give way. Stewart & Company v. Sadrukula, 309 U. S. 94.

The defendants rely chiefly upon the case, State of Alabama v. King & Boozer, 314 U. S. 1.

All that is necessary to convince one that the King & Boozer case is not applicable here is to parallel this case with the case of Federal Land Bank v. Bismarck Lumber Company, 314 U. S. 95, rendered the same day as the King & Boozer case. In King & Boozer the State law operated only on the private independent contractor and with respect to its own property. In the Federal Land Bank case, which as stated above was rendered the same day as the case relied upon by the defendants, the State of North Dakota sought to impose its sales tax from a dealer directly to the Federal agent and instrumentality. The incident of the tax was, by compulsion of the State law rather than by [fol. 168] contract, directly on the purchaser who in that instance was a Federal instrumentality. The Supreme Court accordingly held the levy invalid as in violation of a sovereign immunity of the Federal government. The Florida statute here involved, as applied by the defendants, operates directly on the United States, and it would seem that the case of Federal Land Bank v. Bismarck Lumber Company is controlling in this instance. The Florida act is legislation for the regulation of the fertilizer industry, and not legislation for raising revenue, and the fees required are only one aspect of a total scheme of regulation which cannot be validly applied to the United States, its property or transactions. The property of the United States is immune from seizure, even to collect a valid tax, and certainly this Federal property is immune from State seizure in the case at bar even to collect a valid fee.

This the 30th day of October, A. D. 1942.

(S.) Augustine V. Long, United States District Judge.

[fol. 169] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR ALLOWANCE OF APPEAL AND PROOF OF SERVICE—Filed January 13, 1943

To United States of America,

Hon. Francis M. Biddle, Attorney General of the United States;

Hon. Francis M. Shea, Assistant Attorney General of the United States;

Hon. George Earl Hoffman, United States Attorney, Northern District of Florida, and

Hon. Claude R. Wickard, as Secretary of Agriculture, United States of America:

[fol. 170] Please Take Notice that Nathan Mayo and Roy Hutchinson, two of the defendants in the above entitled cause, will apply to the Honorable Augustine V. Long, one of the Judges of the District Court of the United States for the Northern District of Florida and one of the Judges of the specially constituted District Court of three Judges who heard and decided the above cause on October 26, 1942, for an order allowing appeal to the Supreme Court of the United States of said final order dated October 26, 1942. Said application will be made at the chambers of the District Judge in Gainesville, Florida on January 13, 1943 at 10:00 o'clock A. M. or as soon thereafter as counsel may be heard.

(S.) J. Tom Watson, Attorney General of Florida; James H. Millican, Jr., Assistant Attorney General of Florida; Fred M. Burns, Assistant Attorney General of Florida; H. E. Carter, Wm. C. Pierce, Attorneys for the above defendants.

[fol. 171] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff,

vs.

NATHAN MAYO, ROY HUTCHINSON, JOHN DOE I, JOHN DOE II, and John Doe III (the names John Doe I, John Doe II, and John Doe III Being Fictitious, the True Names of Said Defendants being Unknown to the Plaintiff, the Persons Intended Being the Persons who Issued "Stop Sale Notices" against Three Certain Lots of 20% Superphosphate fertilizer, the Property of the United States of America), Richard Roe I, Richard Roe II, and Richard Roe III (the names Richard Roe I, Richard Roe II, and Richard Roe III Being Fictitious, the True Names of Said Defendants Being Unknown to the Plaintiff, the Persons Intended Being Certain Sheriffs who Are Seizing or Threatening to Seize and Sell at Public Sale All Superphosphate Fertilizer, the Property of the United States of America, Shipped into Their Respective Counties), Defendants

AFFIDAVIT OF SERVICE

STATE OF FLORIDA,
County of Leon:

Before me, the undersigned authority, personally appeared James H. Millican, Jr., who, being by me first duly sworn, upon oath deposes and says:

That he is an Assistant Attorney General of the State of Florida and of counsel for the defendants Nathan Mayo and Roy Hutchinson, in the above entitled cause;

[fol. 172] That on the 6th day of January A. D. 1943, at 6:00 o'clock P. M., he did mail by depositing in a United States Post Office Box in the Capitol Building in the City of Tallahassee, Florida, sealed envelopes with postage prepared, addressed as follows, each containing a copy of the Notice hereto attached, to-wit:

Hon. Francis M. Biddle, Attorney General of the United States, Washington, D. C.

Hon. Francis M. Shea, Assistant Attorney General of the United States, Washington, D. C.

Hon. George Earl Hoffman, United States Attorney, Northern District of Florida, Federal Building, Pensacola, Florida.

Hon. Claude R. Wickard, Secretary of Agriculture of the United States of America, Washington, D. C.

(S.) James H. Millican, Jr.

Sworn and subscribed to before me this 6th day of January, A. D. 1943. (S.) Marion A. Davidson, Notary Public. My Commission expires: 10-15-45. (Notarial seal.)

[fol. 173] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 13, 1943

Come now Nathan Mayo and Roy Hutchinson, defendants in the above entitled cause, and respectively show unto the Court that:

1

The United States of America, on to-wit September 19, 1942, filed its complaint in the above entitled court wherein and whereby it prayed interlocutory and final injunctions against these defendants enjoining and prohibiting them from making inspection of and otherwise enforcing the Florida commercial fertilizer inspection laws against commercial fertilizers shipped into the State of Florida from other states, at the direction of the said United States or under its authority, for use upon lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States;

2

The Honorable Augustine V. Long, one of the judges of the above styled court, on to-wit September 28, 1942, made and entered an order calling a three judge court for the purpose of hearing the petition for interlocutory injunction contained in the said complaint;

[fol. 174] 3

These defendants, on to-wit October 23, 1942, filed their answer and counter-claim for declaratory relief;

4

The plaintiff, on to-wit October 26, 1942, filed its reply to said counter-claim and moved for summary judgment on the pleadings;

5

The parties to the cause, on to-wit October 26, 1942, filed their stipulation wa-ving the ten days notice required by Rule 56 (c) of the Federal Rules of Civil Procedure before the entry of summary judgments; and

6

On to-wit October 26, 1942, the said cause came on for hearing upon the application for interlocutory injunction and for summary judgment, before a three-judge court, whereupon the said court made and entered an order wherein and whereby it:

(a) Denied the motion of these defendants to dismiss the complaint;

(b) Dismissed the counterclaim of these defendants and denied their motion to bring in additional parties;

(c) Granted the plaintiff's application for a preliminary injunction;

(d) Entered summary judgment finally enjoining these defendants as prayed in the complaint; and

(e) Made and filed findings of facts and conclusions of law in the said cause;

the said order having been entered in the Civil Order Book at pages 375 and 376.

[fol. 175] That the aforesaid order, finally disposing of the cause and enjoining these defendants, is greatly to the prejudice of these defendants, and to the rights and interests of the State of Florida, and is erroneous and inequitable and should be reversed and set aside.

That the errors upon which these defendants claim to be entitled to an appeal are fully set out in the assignment of errors and prayer for reserval, filed with the Clerk of this Court, pursuant to Rule 9 of the Rules of the United States Supreme Court; and that there has likewise been filed with the Clerk a statement as to the jurisdiction of the

United States Supreme Court, as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that these defendants may obtain relief in the premises and have opportunity to show errors complained of, these defendants petition this honorable court and pray that they be allowed an appeal, in the above entitled cause, to the United States Supreme Court agreeably to the statutes and rules of court in such cases made and provided.

(S.) J. Tom Watson, Attorney General of Florida; (S.) James H. Millican, Jr., Assistant Attorney General of Florida; (S.) Fred M. Burns, Assistant Attorney General of Florida; (S.) H. E. Carter, Wm. C. Pierce, Attorneys for the Above Defendants.

[fol. 176] In United States District Court

Assignment of Errors—Filed January 13, 1943

Come now Nathan Mayo and Roy Hutchinson, defendants in the above entitled cause, and say that in the record and proceedings of the court, in the said above entitled cause, and in the final order made and entered therein, on to-wit October 26, 1942, there is manifest error; and for error these defendants assign the following, to-wit:

First Assignment. The court, composed of three Judges, committed reversible error when it made and entered its order of October 26, 1942, from which the appeal herein is taken.

Second Assignment. The said court committed reversible error when it denied the motion of these defendants to dismiss the complaint.

Third Assignment. The said court committed reversible error when it granted the motion of the plaintiff to dismiss the counter-claim of these defendants for want of jurisdiction; and when it denied the motion of these defendants to add parties to the cause.

Fourth Assignment. The said court committed reversible error when it granted the application of the plaintiff for a preliminary injunction as prayed in the complaint.

[fol. 177] *Fifth Assignment.* The said court committed reversible error when it granted the motion of the plaintiff for summary judgment enjoining these defendants as prayed in the complaint, and for final permanent injunction in the terms of the temporary restraining order theretofore issued.

Sixth Assignment. The said court committed reversible error when it found and held that the property and transactions of the United States and its agencies, referred to in the findings of fact, are, under the Constitution of the United States, immune from and not subject to the application of the Florida Commercial fertilizer inspection laws.

Seventh Assignment. The said court committed reversible error when it found and held that the application, by these defendants, of the Florida commercial fertilizer inspection laws to the property and transactions of the United States and its agencies, as described in the findings of fact, is in violation of the Constitution of the United States and beyond the power of these defendants as officers of the State of Florida.

Eighth Assignment. The said court committed reversible error when it found and held that the distribution of the fertilizer and fertilizer materials by the United States and its agencies, as described in the findings of fact, is, under the Constitution of the United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida commercial fertilizer inspection laws.

Ninth Assignment. The said court committed reversible error when it took jurisdiction of the above cause and the subject matter thereof and adjudicated the same, for that the said cause is in effect a proceeding against the State of Florida by the United States, and seeks to bring into question and enjoin, suspend or restrain the said State of [fol. 178] Florida, through its officers, agencies, agents and employees acting within the scope of their lawful authority, from the exercise of one of the sovereign functions or police powers reserved to the said state under and by virtue of the Constitution of the United States; to-wit, the inspection, analysis and control of the use of agricultural fertilizers and fertilizer materials used on, in or mixed with the lands and soils under the jurisdiction of the State of Florida and

on or in lands which do not belong to and which are not under the jurisdiction or control of the said United States. The said proceeding is in effect one between the United States and the State of Florida.

Tenth Assignment. The said court committed reversible error when it took jurisdiction of the above cause and the subject matter thereof and adjudicated the same, for that the complaint in the said cause seeks to bring in question and to enjoin, suspend or restrain the enforcement, operation or execution of an order of an administrative board or commission of this state, or to enjoin, suspend or restrain action in compliance with such order; to-wit, rules, regulations and orders, in regard to the inspection, analysis and use of agricultural fertilizers and fertilizer materials, issued by the Commissioner of Agriculture of the State of Florida pursuant to the statutes and laws of the State of Florida, when a plain, speedy and efficient remedy may be had in the courts of the State of Florida.

Eleventh Assignment. The said court committed reversible error when it took jurisdiction of the above cause and the subject matter thereof and adjudicated the same, for that the complaint in the said cause seeks to bring in [fol. 179] question and to enjoin, suspend or restrain the assessment, levy and collection of an inspection fee or tax imposed by and pursuant to the statutes and laws of the State of Florida, to defray the expenses of inspection and analysis of fertilizer and fertilizer materials under the laws of said state, when a plain, speedy and efficient remedy may be had in the courts of the State of Florida.

Twelfth Assignment. The said court committed reversible error when it made and entered its order of October 26, 1942, from which the appeal herein is taken, for that the complaint fails to state a claim against these defendants, or either of them, upon which relief should be granted.

Thirteenth Assignment. The said court committed reversible error when it made and entered its order of October 26, 1942, from which the appeal herein is taken, for that the complaint fails to state a claim against these defendants, or either of them, upon which relief should be granted, because the Soil Conservation and Domestic Allotment Act and other federal statutes and laws, under the

authority of which the United States and its agencies, mentioned in the complaint, purport to carry out and perform the program of soil conservation and to distribute fertilizer and fertilizer materials in the State of Florida, as alleged in the complaint, are unconstitutional and invade the reserved rights of the State of Florida, in that they form a statutory plan to regulate and control agricultural production within said state, a matter beyond the powers delegated to the federal government by the Constitution of the United States.

Fourteenth Assignment. The said court committed reversible error when it made and entered its order of October 26, 1942, from which the appeal herein is taken, for that the complaint fails to state a claim against these defendants, or either of them, upon which relief should be [fol. 180] granted, because the Soil Conservation and Domestic Allotment Act and other Federal statutes and laws, under the authority of which the United States and its agencies, mentioned in the complaint, purport to carry out and perform the program of soil conservation and to distribute fertilizer and fertilizer materials in the State of Florida, as alleged in the complaint, are, as applied and construed by the United States and its said agencies in making the purchase, distribution and other disposal of the said fertilizer and fertilizer materials and as applied and construed in the said complaint, unconstitutional and invade the reserved rights of the State of Florida, in that, when so construed and applied, they form a statutory plan to regulate and control agricultural production within said state, a matter beyond the powers delegated to the federal government by the Constitution of the United States.

Fifteenth Assignment. The said court committed reversible error when it made and entered its order of October 26, 1942, from which the appeal herein is taken, for that the complaint fails to state a claim against these defendants, or either of them, upon which relief should be granted, because the said complaint seeks to bring into question and to enjoin and restrain these defendants from the exercise of sovereign functions and police powers reserved to the State of Florida and denied to the federal government under the Constitution of the United States, which functions and powers these defendants are

required to exercise and enforce, as officers and agents of the State of Florida, under the Florida commercial fertilizer inspection laws.

Sixteenth Assignment. The said court committed reversible error when it held that the Florida commercial [fols. 181-209] fertilizer inspection laws did not apply to fertilizer and fertilizer materials brought into the State of Florida by the United States or its agencies and disposed of, as set out in the complaint, for use on, in or to be mixed with lands within the said state not owned by or under the exclusive jurisdiction of the United States.

Wherefore, on account of the errors hereinbefore assigned, these defendants, as appellants, pray that the said order of the District Court of the United States in and for the Northern District of Florida, dated October 26, 1942, in the above entitled cause, be reversed and that a decree be rendered in favor of these defendants.

s/ J. Tom Watson, Attorney General of Florida; James H. Millican, Jr., Assistant Attorney Gen-General of Florida; Fred M. Burns, Assistant Attorney General of Florida; H. E. Carter, Wm. C. Pierce, Attorneys for the above defendants.

[fol. 210] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed January 13, 1943

The petition of Nathan Mayo and Roy Hutchinson, defendants in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the judgment of the specially constituted three Judge District Court of the United States for the Northern District of Florida having been filed herein accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this Court and the record in this cause having been considered,

It is Ordered that an appeal be, and is hereby allowed, as prayed, to the Supreme Court of the United States from the final decree of the specially constituted three Judge

District Court of the United States for the Northern District, entered in this cause on the 26th day of October, A. D. 1942, and that the Clerk of the District Court of the United States for the Northern District of Florida, shall, within thirty (30) days from this day, make and transmit to the Supreme Court of the United States under his hand and seal of the Court, a true copy of the material parts of the record herein which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is Further Ordered that said appellants shall give a good and sufficient cost bond in the sum of Two hundred fifty ($250.00) Dollars, conditioned as required by law.

Done and Ordered by the Court this 13th day of January, A. D. 1943.

Augustine V. Long, District Judge.

[fols. 211-218] Cost Bond on appeal for $250.00 approved and filed Jan. 13, 1943 omitted in printing.

[fol. 219] In United States District Court

Praecipe for Transcript of Record—Filed January 30, 1943

To: the Clerk of the Above Stated District Court:

Comes now Nathan Mayo and Roy Hutchinson, appellants in the above cause, and respectfully request that you make up and certify the transcript of record in the above entitled cause for the use of the Supreme Court of the United States pursuant to the appeal heretofore allowed in this case, and observe in preparing the same the following directions:

1. Make a complete copy of docket entries;
2. Copy Complaint and affidavit attached thereto of Joseph L. Orr and Exhibits 1 to 5 inclusive, attached thereto, filed September 19, 1942;
3. Copy Order to Show Cause and Restraining Order issued September 19, 1942, filed September 19, 1942 and recorded in Civil Order Book, pages 360-361;
4. Recite issuance of Summons September 19, 1942;

5. Recite Service of Summons on Spessard L. Holland, Governor of the State of Florida, J. Tom Watson, Attorney General of the State of Florida, Nathan Mayo, Commissioner of Agriculture of the State of Florida, Roy Hutchinson, Fertilizer Inspector for the Commissioner of Agriculture of the State of Florida, J. L. Carroll, Fertilizer Inspector for the Commissioner of Agriculture of the State [fol. 220] of Florida, on September 21, 1942 and the filing of such return in this Court September 24, 1942;

6. Copy Order Extending Temporary Restraining Order, filed September 28, 1942 and recorded in Civil Order Book, page 362;

7. Copy Order Calling Three Judge Court, dated September 28, 1942, filed September 28, 1942 and recorded in Civil Order Book, page 364;

8. Copy Order Extending Temporary Restraining Order, filed October 9, 1942 and recorded in Civil Order Book, page 367;

9. Copy Consent Order Extending Temporary Restraining Order, issued October 17, 1942, filed October 17, 1942 and recorded in Civil Order Book, page 372-373;

10. Recite the following: The restraint embodied in the foregoing order of September 19, 1942, was duly extended by successive orders and by consent remained in effect pending hearing and determination of plaintiff's application for a temporary injunction;

11. Copy Answer and Counter-claim of known defendants, filed October 23, 1942;

12. Copy verification of answer, filed October 26, 1942;

13. Copy Motion to Bring in Additional Parties and Notice thereof, filed October 26, 1942;

14. Copy Reply of the United States to Counterclaim and attachments thereto, filed October 26, 1942;

15. Copy Affidavits of the following, filed on hearing [fol. 221] October 26, 1942:

(a) William G. Finn No. 1;

(b) William G. Finn No. 2;

(c) Fred B. Northrup with letter of Robert H. Shields attached and Exhibits "A", "B", "C" and "D" attached thereto;

(d) Affidavit of Fred B. Northrup sworn to October 23 with map attached thereto;

16. Affidavit of J. J. Taylor, acknowledged October 23, 1942;

17. Affidavit of J. J. Taylor, acknowledged October 17, 1942;

18. Affidavit of V. L. Fuqua, acknowledged October 22, 1942;

19. Affidavit of J. W. Woodside, acknowledged October 20, 1942;

20. Copy Stipulation filed October 26, 1942 waiving ten (10) days notice of plaintiff's motion for summary judgment;

21. Recite that the attorneys for the parties appeared and consented to hearing on the merits and filing of evidence at the time hearing for preliminary injunction was held and pressed;

22. Copy Findings of Fact and Conclusions of Law, filed October 26, 1942;

23. Copy Order on Motions and Final Decree, dated October 26, 1942, filed October 26, 1942 and recorded in Civil Order Book, page 375-376;

24. Copy Dissenting Opinion by District Judge Waller, filed October 28, 1942;

25. Copy opinion of Judge Long, filed October 30, 1942 [fol. 222] and recorded in Civil Order Book, page 377-380;

26. Copy Notice of Application for Allowance of Appeal and Proof of Service, filed January 13, 1943;

27. Copy Petition for Appeal to Supreme Court, filed January 13, 1943;

28. Copy Assignment of Errors, filed January 13, 1943;

29. Copy Statement as to Jurisdiction, filed January 13, 1943;

30. Copy Order Allowing Appeal, signed January 13, 1943, filed January 13, 1943 in Civil Order Book, page 397-398;

31. Copy Cost Bond and approval thereon, required by law, on January 13, 1943;

32. Recite issuance of Citation on January 13, 1943 and notation that same accompanies the record, and recite proof of service of same;

33. Copy Notice of Service of Appeal and Affidavit of Service attached, filed on January 23rd, 1943;

34. If Appellee, under Paragraph 3 of Rule 12 of the Supreme Court Rules, should file a typewritten statement

or statements disclosing any matter or ground making against the jurisdiction of the Supreme Court, you will please copy the same;

34. If Appellee files with you a Praecipe indicating additional portions of the record to be included or recited, you [fol. 223] will please observe and follow the directions contained therein in making up of said transcript, and you will please copy such Praecipe;

35. Copy this Praecipe in making up the Record;

36. Attach to said Transcript of Record your certificate.

Respectfully, (S.) J. Tom Watson, Attorney General of Florida; (S.) Jas. H. Millican, Jr., Assistant Attorney General of Florida; (S.) Fred M. Burns, Assistant Attorney General of Florida; (S.) H. E. Carter, Wm. C. Pierce, Attorneys for Above Defendants.

[fol. 224] On the January 30, 1943, Proof of Service of Praecipe for Transcript of Record, was filed in the following words and figures:

(Style of Case Omitted)

Proof of Service

STATE OF FLORIDA,
County of Leon:

Before me, the undersigned authority, personally appeared Jas. H. Millican, Jr., who, being by me first duly sworn, upon oath deposes and says:

That he is an Assistant Attorney General of the State of Florida and of counsel for the defendants, Nathan Mayo and Roy Hutchinson, in the above entitled cause;

That on the 28th day of January, A. D. 1943, at 1:15 o'clock P.M., he did forward a copy of the Praecipe for Transcript of Record in sealed envelopes with postage prepared, addressed as follows:

Hon. Francis M. Biddle, Attorney General of the United States, Washington, D. C.

Hon. George Earl Hoffman, United States Attorney, Northern District of Florida, Federal Building, Pensacola, Florida.

Hon. Francis M. Shea, Assistant Attorney General of the United States, Washington, D. C.

Hon. Claude R. Wickard, Secretary of Agriculture of the United States of America, Washington, D. C.

by depositing said envelopes in a United States Post Office Box in the Capitol Building in the City of Tallahassee, Florida.

(S.) Jas. H. Millican, Jr.

[fol. 225] Sworn to and subscribed before me this 28th day of January, A. D. 1943. (S.) Marion A. Davidson, Notary Public. My commission expires: 10-15-45. (Notarial Seal.)

[fols. 226-229] Citation in usual form showing service by affidavit on Francis Biddle, et al., omitted in printing.

[fol. 230] IN UNITED STATES DISTRICT COURT

[Title omitted]

DOCKET ENTRIES

9-19-1942	Complaint and affidavit filed.
9-19-1942	Order to show cause and temporary restraining order.
9-19-1942	Summons issued and handed Marshal.
9-21-1942	Initial Civil docket cards mailed Pensacola.
9-24-1942	Marshal's return showing service on Spessard L. Holland, J. Tom Watson, Nathan Mayo, Roy Hutchinson & J. L. Carroll.
9-28-1942	Order extending temporary restraining order.
9-28-1942	Order calling three Judge Court & mailing copies to Spessard L. Holland, J. Tom Watson, Nathan Mayo & J. L. Carroll.
10-9-1942	Order extending temporary restraining order.
10-9-1942	Certified copies of order extending temporary restraining order mailed to the following: Spessard L. Holland, J. Tom Watson, Nathan Mayo, Roy Hutchinson & J. L. Carroll.
10-17-1942	Consent order extending temporary restraining order.
10-23-1942	Answer of defendants.
10-26-1942	Reply of United States to counter-claim of defendants.

10-26-1942 Affidavit of Fred B. Northup filed by plaintiff.
10-26-1942 Affidavit of Fred B. Northup filed by plaintiff.
10-26-1942 Affidavit of William G. Finn (#1) filed by plaintiff.
10-26-1942 Affidavit of William G. Finn (#2) filed by plaintiff.
10-26-1942 Supplemental affidavit filed by plaintiff.
10-26-1942 Memorandum in support of application for temporary injunction filed by plaintiff.
10-26-1942 Affidavit of J. J. Taylor (#1) filed by defendants.
10-26-1942 Affidavit of J. J. Taylor (#2) filed by defendants.
10-26-1942 Affidavit of J. W. Woodside filed by defendants.
10-26-1942 Affidavit of V. L. Fuqua filed by defendants.
10-26-1942 Affidavit of Nathan Mayo in support of allegations contained in answer.
10-26-1942 Motion of defendants to bring in additional parties.
10-26-1942 Three Judge Court consisting of Honorable Leon McCord, Circuit Judge, and Honorable Augustine V. Long and Honorable Curtis L. Waller, District Judges, convened at Tallahassee, Fla.
10-26-1942 Oral motions made in open court:
1. Motion of defendants to dismiss complaint.
2. Motion of United States to dismiss counter-claim.
3. Motion of United States for summary judgment.

10-26-1942 Stipulation of parties waiving notice before entry of summary judgment.
10-26-1942 Argument of counsel.
10-26-1942 Final decree denying motion to dismiss complaint, denying motion to bring in additional parties, denying defendants counter-claim, granting application of United States for a temporary injunction and making same permanent, and entering summary judgment for the United States. (Judge Waller Dissenting.)
10-26-1942 Findings of facts and conclusions of law.
10-28-1942 Dissenting opinion filed by Judge Waller.

10-29-1942 Final civil docket cards mailed Pensacola.
10-30-1942 Opinion by Judge Long.
1-13-1943 Notice of application for allowance of appeal & proof of service.
1-13-1943 Petition for appeal to Supreme Court.
1-13-1943 Assignment of errors.
1-13-1943 Order allowing appeal.
1-13-1943 Cost bond filed.
1-13-1943 Statement as to jurisdiction.
1-23-1943 Notice of appeal with affidavit of service attached thereto.
1-30-1943 Praecipe for transcript of record.
1-30-1943 Proof of service.
2-2-1943 Citation & Proof of service.

[fol. 231] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 232] IN THE SUPREME COURT OF THE UNITED STATES

NATHAN MAYO, et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed February 25, 1943

Pursuant to Rule 13, paragraph 9 of the Supreme Court Rules, as amended, the appellants adopt their Assignment of Errors as their statement of the points to be relied upon; and designate the whole of the record, as filed in the above case, is necessary for consideration of the cause, except the following items:

(a) Do not include tentative answer attached to Reply of the United States to Counter-claim (Item 14 on Praecipe and appearing at pages 93 to 108 inclusive, on Index);

(b) Do not include Item 21 in printing of the record (appearing at page 153 on Index);

(c) Do not print Statement as to Jurisdiction and Exhibits "A", "B", "C" and "D" (Item 29 on the Praecipe

[fol. 233] and appearing at pages 182 to 208 inclusive, on Index).

Dated, this 23 day of February, A. D. 1943.

J. Tom Watson, Attorney General, The Capitol, Tallahassee, Florida. James H. Millican, Jr., Assistant Attorney General, Fred M. Burns, Assistant Attorney General, H. E. Carter, Wm. C. Pierce, Of Counsel for Appellants.

[fol. 234] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 726

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—March 1, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 47,227. N. Florida, D. C. U. S., Term No. 726. Nathan Mayo and Roy Hutchinson, Appellants, vs. The United States of America. Filed February 11, 1943. Term No. 726 O. T. 1942.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

J. TOM WATSON,
Attorney General of Florida;
JAMES H. MILLICAN, JR.,
FRED M. BURNS,
Assistant Attorneys General of Florida,
H. E. CARTER,
WM. C. PIERCE,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

Come now Nathan Mayo and Roy Hutchinson, defendants in the above entitled cause, and, in compliance with Rule 12 of the Rules of the Supreme Court of the United States as amended, present this their separate typewritten statements particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on appeal to review the decree of October 26, 1942, in this case from which the appeal herein is taken, as follows:

FIRST.

Basis Upon Which Is Is Contended That Supreme Court Has Jurisdiction.

The jurisdiction of the Supreme Court of the United States to review the decree of October 26, 1942, in this case

from which the appeal herein is taken, is conferred by Sections 238 and 266 of the Judicial Code of the United States, which sections provide that an appeal may be taken directly to the Supreme Court of the United States from orders, judgments or decrees granting or denying interlocutory or permanent injunctions suspending or restraining the action of any officer of any state in the enforcement or execution of any statute of such state, or in the enforcement or execution of any order made by any administrative board or commission acting under or pursuant to any such statute. The defendant, Nathan Mayo, who is the Commissioner of Agriculture of the State of Florida, and the defendant, Roy Hutchinson, who is an inspector in the Bureau of Inspections of the State of Florida acting under the direction and control of the said defendant Nathan Mayo, were, by the aforesaid decree of October 26, 1942, restrained and prohibited from carrying out and enforcing the Florida Commercial Fertilizer Inspection Laws (Chapter 576, Laws of Florida, 1941).

SECOND.

Statutory Provisions Believed to Sustain Jurisdiction.

The statutory provisions believed to sustain the appellate jurisdiction of the Supreme Court of the United States and the direct appeal of this cause, are Sections 238 and 266 of the Judicial Code of the United States, as amended (28 U. S. C. A. Sections 345 and 380).

THIRD.

The Statutes of the State of Florida the Validity of Which Are Involved.

The statutes of the State of Florida the validity of which were involved in the above entitled cause, and which were

held, by the three judge district court, to be inapplicable to fertilizer and fertilizer materials brought into the State of Florida by the United States or its agencies and disposed of for use on, in or mixed with lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States, because of constitutional grounds and the sovereignty of the United States, are the Florida Commercial Fertilizer Inspection Laws, the same being Chapter 576, Florida Statutes, 1941, the pertinent provisions of which are as follows:

(1) Section 576.03 provides as follows:

> "Every manufacturer or importer of, or agent for, the sale of commercial fertilizer within the state shall, previous to offering commercial fertilizer for sale in this state, and annually thereafter on or before July 1, and before offering for sale thereafter, file with the Commissioner of Agriculture a written statement giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis under oath of each brand of mixed fertilizer or fertilizer materials offered for sale by him, but he shall not be permitted to register any brand of mixed fertilizer of which the available primary plant food constitutes less than fourteen percent; * * *"

This section also provides that, on special permission granted by the Commissioner of Agriculture, on showing as set out therein, sale of fertilizer or fertilizer material of less than fourteen per cent available primary plant food may be made.

(2) Under Section 576.04, Florida Statutes, 1941, it is unlawful for any manufacturer, importer or agent for sale of commercial fertilizer to sell or make delivery of such commercial fertilizer before the registration thereof has been accepted by the Commissioner of Agriculture, as set out in Section 576.03, Florida Statutes, 1941.

(3) Under Section 576.05, Florida Statutes, 1941, every manufacturer (person engaged in the business of importing, preparing, mixing or manufacturing commercial fertilizer for sale either direct to consumers or by or through other media of distribution) shipping or delivering commercial fertilizer (fertilizer materials or mixed fertilizer) in lots of one or more tons, is required to notify the Commissioner of Agriculture on date of such shipment, giving the name and address of the consignee, point of destination, quantity and brand or brands, and if shipped by rail in carload lots, the number and initial of the car.

(4) Under Section 576.07, Florida Statutes, 1941, every package of commercial fertilizer (fertilizer materials or mixed fertilizer) manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State of Florida is required to have securely attached a tag showing the name and brand of the fertilizer or fertilizer material, name and address of the manufacturer, the net weight of the package and other information fully described in Sections 576.08, 576.09 and 576.10, Florida Statutes, 1941, which information, among other things, requires data relative to plant foods and content of the material.

(5) Section 576.11, Florida Statutes, 1941, provides as follows:

> "Every manufacturer or agent for commercial fertilizer shall pay to the state treasurer a fee of twenty-five cents per ton for commercial fertilizer offered for sale in the State of Florida, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be ten cents per ton * * *."

(6) Under Section 576.12, Florida Statutes, 1941, stamps and labels furnished by the Commissioner of Agriculture are required to be attached to each package of fertilizer or fertilizer material sold or used in this state to evidence payment of the inspection fee required by Section 571.11, Florida Statutes, 1941.

(7) Section 576.13, Florida Statutes, 1941, provides as follows:

> "Each manufacturer and importer of or dealer in fertilizers, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, shall forward the money for fertilizer stamps or labels with his letter of request, directed to the state treasurer. Said letter of request shall contain the statement of tons of fertilizers for which stamps or labels are required and the number of packages contained in each ton. The state treasurer shall hand to the commissioner the letter of request for fertilizer stamps or labels, which order shall be filled by the commissioner at once if found correct."

(8) Under Section 576.15, Florida Statutes, 1941, commercial fertilizers or fertilizer materials or mixed fertilizers imported into or sold in this state which do not have the tag, label and stamp attached as required by the Florida Commercial Fertilizer Law are forfeited to the State of Florida and becomes subject to seizure and sale by the sheriff of the county wherein found.

(9) Under Section 576.21, Florida Statutes, 1941, the Commissioner of Agriculture of this state is authorized to establish and from time to time amend or change such rules and regulations in regard to inspection, analysis and sale of fertilizer and fertilizer materials as in his judgment will best carry out the requirements of the Commercial Fertilizer Inspection Laws.

(10) By Section 576.01 (10) "manufacturer" is defined as follows:

> "'Manufacturer' means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word 'manufacture' means preparation, mixing, or manufacturing."

(11) By Section 576.01 (13) "To import" is construed as follows:

> "'To import' and the word 'importing' shall be construed as meaning the bringing of commercial fertilizer into this state from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state, and the word 'importer' shall be construed as meaning the person who brings in commercial fertilizer from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state."

FOURTH.

Date of Decree Appealed From and Date of Appeal.

The date of the decree appealed from and sought to be reviewed on direct appeal herein is October 26, 1942, and the date upon which the application for appeal herein is presented is January 13, 1943.

FIFTH.

Nature of the Case and Rulings of the Court Bringing the Case Within the Jurisdictional Provisions Relied Upon.

The United States of America, on to-wit September 19, 1942, filed its complaint in the United States District Court, for the Northern District of Florida, against these defend-

ants praying interlocutory and final injunction against them enjoining and prohibiting them from making inspection of or otherwise enforcing the Florida Commercial Fertilizer Inspection Laws against the commercial fertilizer and fertilizer materials brought or shipped into the State of Florida from other states, by, at the direction of or under the authority of the United States, for use in, on or mixed with lands within the State of Florida not owned or under the exclusive jurisdiction of the United States. The United States, in and by its said complaint, alleges and contends that:

(a) The distribution of fertilizer and fertilizer materials under the Soil Conservation and Domestic Allotment Act of the United States is a sovereign function, and that the inspection of said fertilizer and fertilizer materials and the enforcement of the Florida Commercial Fertilizer Inspection Laws against such fertilizer and fertilizer materials constitute an interference and obstruction of said sovereign function of the United States; and

(b) The Florida Commercial Fertilizer Inspection Laws and their enforcement against fertilizer and fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid, violate Article VI, Clause 2 of the Constitution of the United States and conflict with the Soil Conservation and Domestic Allotment Act of Congress of the United States and are to that extent unconstitutional and void.

These defendants, on to-wit October 23, 1942, filed their answer and counter-claim for declaratory relief to the said complaint, in and by which they alleged and contend that:

(a) The Florida Commercial Fertilizer Inspection Laws are constitutional and applicable to fertilizer and

fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid;

(b) The said Florida Commercial Fertilizer Inspection Laws do not conflict with or violate any provision of the constitution of the United States or with the valid provisions of any act of the Congress of the United States;

(c) The enforcement of said Florida Commercial Fertilizer Inspection Laws against fertilizer and fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid, violate no sovereign function of the United States;

(d) The said Florida Commercial Fertilizer Inspection Laws constitute a valid exercise of one of the sovereign functions of police powers reserved to the states under and by virtue of the constitution of the United States and the 10th amendment thereto;

(e) The Soil Conservation and Domestic Allotment Act, and other statutes mentioned in the complaint, form a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government by the constitution of the United States; and

(f) The proceeding is one to enjoin, suspend or restrain the enforcement of rules, regulations or orders issued by the Commissioner of Agriculture of the State of Florida, acting as an administrative board or commission for the enforcement of the Florida Commercial Fertilizer Inspection Laws of the State of Florida, and to enjoin, suspend or restrain the collection of an inspection fee or tax imposed by the Florida Commercial Fertilizer Inspection Laws pursuant to said laws

when a plain, speedy and efficient remedy may be had at law or equity in the courts of the State of Florida.

The main and controlling questions presented by the pleadings aforesaid are:

(a) The constitutionality or unconstitutionality of the Florida Commercial Fertilizer Inspection Laws insofar as they may be applied to fertilizer and fertilizer materials brought or shipped into the State of Florida from other states, by, at the direction of or under the authority of the United States for use in, on or mixed with lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States;

(b) Whether or not the United States is invading the powers reserved to the states under the constitution of the United States by bringing or shipping fertilizer or fertilizer materials into the state aforesaid without inspection;

(c) The extent of the police powers of the states under the constitution of the United States;

(d) The rights of the several states to protect their own rights and the rights of their people against damage due to the use of inferior or improper fertilizer and fertilizer materials brought into the states by the United States or under its authority.

The issue is one of the extent of the police powers of the states and the sovereign powers of the United States; where does the police powers of the states cease and the sovereign powers of the United States begin. The extent of the operation of the Florida Commercial Fertilizer Inspection Laws depends upon a determination of the extent of the police powers of the states as against the sovereign powers of the United States. These issues seem to clearly bring the case squarely within the purview of Sections 238 and

266 of the Judicial Code of the United States (28 U. S. C. A. Sections 345 and 380) which permit a direct appeal from the district courts to the Supreme Court of the United States from interlocutory and final decrees suspending or restraining the enforcement or execution of state statutes by state officers or the enforcement or execution of orders made by administrative boards or commissions pursuant to state statutes.

SIXTH

Grounds Upon Which It Is Contended That the Questions Involved Are Substantial.

The questions involved in this appeal are substantial in character in that they involve the question of the extent of states' rights and police powers and determine the extent of the powers of the several states to make an inspection of fertilizer and fertilizer materials brought or shipped into states, by or under the direction of the United States, for use upon lands under the jurisdiction of such states. A determination of the questions involved in this appeal will also be a substantial determination of the question of the rights of the states to inspect seeds, plants, bulbs, nursery stock and many other things that are or may be brought or shipped into the states under like circumstances. The question also involves the extent of the sovereign powers of the United States as against the rights and powers of the states to make inspection of the matters aforesaid. The questions are substantial questions of states' rights. The questions involved have not heretofore been determined by the Supreme Court of the United States.

SEVENTH

Copies of Opinions On Rendition of the Judgment.

The following opinions and findings of fact and conclusions of law were filed in the cause by the members of the

three judge court which tried the cause and rendered the judgment therein and the following judgment was entered therein, to-wit:

(a) District Judge Long on October 30, 1942 filed an opinion in the cause, the same being in words and figures as will more fully appear by reference to a true and correct copy attached hereto as Exhibit "A" and made a part hereof by reference;

(b) District Judge Walter on October 28, 1942 filed his dissenting opinion in the cause, the same being in words and figures as will more fully appear by reference to a true and correct copy hereto attached as Exhibit "B" and made a part hereof by reference;

(c) The District Court, composed of three judges, on October 26, 1942 filed its findings of fact and conclusions of law, the same being in words and figures as will fully appear by reference to a true and correct copy hereto attached as Exhibit "C" and made a part hereof by reference;

(d) The said District Court, on October 26, 1942, made and entered its final decree, the same being in words and figures as will fully appear by reference to a true and correct copy thereof hereto attached as Exhibit "D" and made a part hereof by reference.

EIGHTH

Cases Believed to Sustain Jurisdiction.

Frank Eicholz v. *Public Service Commission of the State of Missouri,* 306 U. S. 268, 83 L. Ed. 641;

Driscoll v. *Edison Power & Light Co.,* 307 U. S. 104, 83 L. Ed. 1134, 59 S. Ct. 715;

Pullman Company v. *Railroad Commission of Texas,* 33 F. Supp. 675, reversed in 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971;

Brucker v. *Fisher,* 49 F. (2d) 759;

Smith v. *Wilson,* 273 U. S. 388, 71 L. Ed. 699, 47 S. Ct. 385;

J. Smylie Harkness v. *Valentine K. Irion, Commissioner,* 278 U. S. 92, 73 L. Ed. 199;

Mayo v. *Lakeland Highlands Canning Co.,* 309 U. S. 310, 84 L. Ed. 774, 60 S. Ct. 516;

Oklahoma Natural Gas Co. v. *Campbell Russell, et al., constituting Corporation Commission of the State of Oklahoma,* 261 U. S. 290, 67 L. Ed. 659, 43 S. Ct. 353;

Durrant v. *Bennett,* 54 F. (2d) 634.

Respectfully submitted,

J. Tom Watson,
Attorney General of Florida;
James H. Millican, Jr.,
Assistant Attorney General of Florida;
Fred M. Burns,
Assistant Attorney General of Florida;
H. E. Carter,
Wm. C. Pierce,
Attorneys for the Above Defendants.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

NATHAN MAYO, ET AL., *Defendants*.

Attorneys for Plaintiff:

Francis M. Shea, Assistant Attorney General; George Earl Hoffman, United States Attorney; William B. Watson, Jr., Assistant United States Attorney.

Sidney J. Kaplan, Special Assistant to the Attorney General; Martin Norr, Attorney, Department of Justice.

Attorneys for Defendants:

J. Tom Watson, Attorney General of Florida.
Fred M. Burns, Assistant Attorney General of Florida.
H. E. Carter, of Tallahassee, Florida.
William C. Pierce, of Tampa, Florida.

Before McCord, Circuit Judge, and Long and Waller, District Judges.

LONG, *District Judge:*

The United States is engaged in the distribution of fertilizer to the farmers of Florida and in other States as a part of a soil conserving program developed by the government to carry out the purposes of the Soil Conservation and Domestic Allotment Act. The outline of the program is set out in the complaint filed herein, and the attached affidavits. The fertilizer is purchased by the government from commercial manufacturers, inspected by the government as to suitability for the purpose for which it is to be used. It is then shipped under government bills-of-lading

to county agricultural conservation associations for the purpose of delivery to the farmers. This distribution is for the purpose of facilitating the planting of such nitrogen-bearing crops as would increase the nitrogen content of the soil and thereby compensate for the critical shortage of nitrogen due to its use in munitions required by the war emergency.

Nitrogen, being unavailable for fertilizer purposes, can only be supplied by these nitrogen growing crops. It, therefore, becomes a question of either the diversion of nitrogen from war needs, or a reduction of the agricultural production, both of which are necessary because of these requirements of the armed forces, the needs of our allies, and the domestic demands. The program is nation wide. The action of the defendants complained of prior to the issuance of the temporary restraining order, had halted the distribution of this very widely needed fertilizer.

The Florida Commercial Fertilizer Law, Section 576.11, requires an inspection fee to be paid by every manufacturer or agent of commercial fertilizer. Section 576.13 refers to manufacturer and importer of, or dealer in fertilizers. Since the rule is that the general words of a statute do not include the government or affect its rights unless the construction be clear and undisputable upon the text of the act (Nardone *v.* United States, 302 U. S. 379; United States *v.* Fox. 94 U. S. 315; United States *v.* Cooper Corporation, 312 U. S. 600), the conclusion could be reached that by this statute of Florida the legislature had no intention of affecting the property of the Federal Government.

There is abundant authority for the holding that a State under the exercise of the police power may pass regulatory acts providing for inspection fees, but that is not the question here. The one and only question to be determined is whether or not Federal transactions are immune from such State regulations. It seems to be well settled as a matter of law that the police power of a State does not extend to the United States, its property or transactions, and that such Federal property and transactions are immune from State regulations, and State statutes are invalid under the Supremacy Clause of the Constitution (Article VI, Clause 2).

Ohio *v.* Thomas, 173 U. S. 276 (cited with approval in Stewart & Company *v.* Sadrakula, 309 U. S. 94) Arizona *v.* California, 283 U. S. 423, the United States may perform its functions without conforming to the police regulations of a State. Johnson *v.* Maryland, 254 U. S. 51; Hunt *v.* United States, 278 U. S. 96; Johnson *v.* Maryland, 254 U. S. 51; Chalk *v.* United States, 114 F. (2d) 207 (C. C. A. 4th) 213 U. S. 679; Posey *v.* Tennessee Valley Authority, 93 F. (2d) 726 (C. C. A. 5th);

The authority of State laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the State law would handicap efforts to carry out the plans of the United States, the State enactment must, of course, give way. Stewart & Company *v.* Sadrukula, 309 U. S. 94.

The defendants rely chiefly upon the case, State of Alabama *v.* King & Boozer, 314 U. S. 1.

All that is necessary to convince one that the King & Boozer case is not applicable here is to parallel this case with the case of Federal Land Bank *v.* Bismarck Lumber Company, 314 U. S. 95, rendered the same day as the King & Boozer case. In King & Boozer the State law operated only on the private independent contractor and with respect to its own property. In the Federal Land Bank case, which as stated above was rendered the same day as the case relied upon by the defendants, the State of North Dakota sought to impose its sales tax from a dealer directly to the Federal agent and instrumentality. The incident of the tax was, by compulsion of the State law rather than by contract, directly on the purchaser who in that instance was a Federal instrumentality. The Supreme Court accordingly held the levy invalid as in violation of a sovereign immunity of the Federal Government. The Florida statute here involved, as applied by the defendants, operates directly on the United States, and it would seem that the case of Federal Land Bank *v.* Bismarck Lumber Company is controlling in this instance. The Florida act is legislation for the regulation of the fertilizer industry, and not legislation for raising revenue, and the fees required are only one aspect of a total scheme of regulation which cannot be validly applied to the

United States, its property or transactions. The property of the United States is immune from seizure, even to collect a valid tax, and certainly this Federal property is immune from State seizure in the case at bar even to collect a valid fee.

This the 30th day of October, A. D. 1942.

(S.) AUGUSTINE V. LONG,
United States District Judge.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

NATHAN MAYO, et al., *Defendants.*

Dissenting Opinion by District Judge Waller.

The Florida Fertilizer Inspection Statute is a valid exercise of the police power of the State to protect the farmers against the sale of inferior or fraudulent fertilizer.

The Federal Government has enacted no statute for the protection of the purchasers of fertilizer in Florida. Under the Constitution all power not granted to the Federal Government was reserved to the States. Moreover, the power of the State to levy a reasonable inspection fee is expressly provided in Section 10 of Article I:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, *except what may be absolutely necessary for executing it's* inspection Laws: * * *" (Italics supplied.)

The right of the State to levy an inspection tax is not merely implied but expressly conferred by the Constitution.

The Congress could not take the power away from the State to levy a reasonable inspection tax. If Congress cannot do so, it follows that the Department of Agriculture cannot do so.

The State is supreme and sovereign in the exercise of its reserved powers. The right to levy an inspection tax is expressly reserved in the State. Therefore, the State is supreme in the exercise of this power.

Congress is supreme in the powers delegated to it, but the right to regulate the inspection of fertilizer or to regulate agriculture was not expressly delegated to the Congress. Whatever power Congress has to regulate agriculture is under the general welfare clause of the Constitution, but the promotion of the general welfare does not call for the striking down of a constitutional power of a State. It is more important that the relations between the State and Federal Governments under our dual system be preserved and left uninfringed than refraining from deducting from a gift to the farmer a reasonable inspection fee levied by the State under the power of the Federal Constitution.

I agree with the majority Court that the State was probably without power to seize property of the United States, to wit, the fertilizer in question, but I consider the seizure as purely procedural. The substantive question is whether or not the Department of Agriculture has the right to procure fertilizer for farmers and thereby permit them to escape the payment of an inspection tax, whereas the vast majority of farmers who are not the recipients of this gratuity will have to pay an inspection tax. It is idle to say that this inspection fee is a burden upon the Federal Government for the reason that since it is a gratuity the Government can, without loss to itself, deduct the amount of the inspection tax from the amount of the benefit to be paid to the farmer, of which the fertilizer distribution is but an advancement.

I do not consider that the inspection fee is a tax, but if it be a tax it is a non-discriminatory tax and compels no burden to be cast upon the Federal Government.

If it be a tax there is no implication that Congress intended to grant immunity from the payment of the tax. There is no immunity from taxation granted in the Fed-

eral Constitution. Immunity proceeds only from the express language of a statute or implications therein. An implied immunity can only be ascertained from the intention of Congress and the nature and effect of the burden placed upon the Government. See Graves *vs.* New York, Ex Rel O'Keefe, 306 U. S. 468; State of Alabama *vs.* King & Boozer, 314 U. S. 1; Curry *vs.* United States, 314 U. S. 14.

In the case of Graves *vs.* New York, Ex Rel O'Keefe, supra, the Court, referring to the decision in the case of Helvering *vs.* Gerhardt, 304 U. S. 405, said:

> "* * * it was there pointed out that the implied immunity of one government and its agencies from taxation by the other *should,* as a principle of constitutional construction, *be narrowly restricted.* For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, * * * " (Underscoring supplied.)

It seems to me that in view of the power of the State expressly conferred by the Federal Constitution to levy an inspection tax, it could not be implied in the absence of express language in the statute, that Congress intended to exempt the fertilizer in question from the provisions of the valid inspection statute of the State of Florida.

Entertaining the above views I am forced to dissent from the findings of fact and conclusions of law of the majority of the Court.

October 28, 1942.

CURTIS L. WALLER,
United States District Judge.

EXHIBIT "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

NATHAN MAYO, ET AL., *Defendants*.

Findings of Fact and Conclusions of Law.

This cause having come on to be heard on plaintiff's application for a preliminary injunction, and at the hearing thereof plaintiff having made formal oral motion for summary judgment in its favor on all the pleadings and affidavits filed herein, and the ten days notice requirement for said motion for summary judgment having been waived by written stipulation, the Court hereby files its findings of fact and conclusions of law as follows:

The Court Finds:

1. This is a civil action brought by the United States of America as plaintiff, of which this Court has jurisdiction under Section 24 (1) of the Judicial Code, as amended (28 U. S. C. Section 41 (1)). This action is brought by direction of the Attorney General.

2. The defendant Nathan Mayo is a resident, citizen, and inhabitant of the State of Florida and of the Northern District thereof. He is the Commissioner of Agriculture of the State of Florida. The defendant, Roy Hutchinson, is an Inspector in the Florida State Department of Agriculture, Inspection Bureau. He is a resident, citizen, and inhabitant of the State of Florida and the Northern District thereof.

3. The United States of America is engaged in the distribution of fertilizer in the State of Florida. This distribution is part of a soil conservation program of the

United States designed to preserve and improve the fertility of the soil of the United States and to accomplish the other purposes enumerated in Section 7 of the Soil Conservation and Domestic Allotment Act (16 U. S. C., Sec. 590g) under the authority of which and of other Federal statutes said program is being carried on. Such distribution is necessary as a part of such program. The particulars of this program are set forth in the affidavit of Joseph L. Orr, sworn to September 17, 1942, filed herein. The Court finds the facts to be as stated in the affidavits of Joseph L. Orr, sworn to September 17, 1942, William G. Finn (No. 1) sworn to October 17, 1942, William G. Finn (No. 2) sworn to October 17, 1942, Fred B. Northrup, sworn to October 19, 1942, Fred B. Northrup, sworn to October 23, 1942, filed herein and said affidavits are hereby incorporated by reference in this finding. Certain superphosphate fertilizer involved in said program is now in the State of Florida and is owned by the United States. As part of the said program, superphosphate fertilizer is being distributed in the State of Florida to facilitate the planting therein, not later than on or about October 15, 1942, of certain soil conserving crops, notably winter legumes, and of certain other crops continuously thereafter, designed to increase the nitrogen content of the soil and thereby to compensate for the shortage for fertilizer purposes of chemical nitrogen due to its use in munitions required by the existing war emergency. If nitrogen is supplied in this way it will leave available for war purposes nitrogen which otherwise would have to be used for agricultural purposes unless there is to be a corresponding decrease in the production of agricultural products. It was necessary that part of said program proceed without delay to permit completion of the distribution of said superphosphate fertilizer prior to October 15, 1942, and that the rest of said program proceed continuously and with all dispatch thereafter. The carrying out of the said program is a part of the sovereign functions of the United States for governmental purposes.

4. Under the purported authority of the Florida Commercial Fertilizer Law, the defendants are interfering with and obstructing and threatening to interfere with and ob-

struct the United States in its exercise of its sovereign functions as aforesaid in carrying out its program for the distribution of fertilizer in the State of Florida.

5. Said interference and obstruction consists of the issuance of and threats to enforce "stop sales notices" prohibiting the distribution of said fertilizer in the State of Florida and seizures of and threats to seize and sell at public sale all fertilizer, the property of the United States, shipped into the State of Florida. Said Florida Commercial Fertilizer Law, and any other statutes on which defendants purport to rely, may not be construed and were not intended to apply to property of and transactions by the United States of America, but if so construed said statutes are unconstitutional, in violation of the Constitution of the United States, and beyond the power of the State of Florida. As so construed said statutes violate Article VI, Clause 2 (the supremacy Clause) of the Constitution of the United States and conflict with the acts of Congress providing for the aforesaid soil conservation program and for the functioning and carrying out thereof and for the functioning of the Department of Agriculture of the United States and for the acquisition and disposition of the fertilizer here involved.

6. Said "stop-sale notices" and seizures are wholly void. The purported ground on which said orders have been issued and said seizures and threats made is that provisions of the said Florida Commercial Fertilizer Law have not been complied with. Said provisions may not be construed to apply to the fertilizer and the program for its distribution herein involved and if so construed would violate Article VI, Clause 2, of the Constitution of the United States and conflict with the Acts of Congress referred to in the foregoing paragraph of these findings.

7. The United States and its property and transactions, under the Constitution of the United States, are immune from the Florida Commercial Fertilizer Law and any other statutes on which defendants purport to rely, as well as outside their intended scope, and the police power of the State of Florida under which such legislation was enacted does

not under the Constitution of the United States extend to the United States or to its property and transactions.

8. Notwithstanding the foregoing defendants have issued such "stop sale notices" as aforesaid and are enforcing and threatening to enforce the same, and are also threatening to seize and sell at public sale, in purported compliance with the Florida Commercial Fertilizer Law and other statutes all fertilizer, the property of the United States, shipped into the State of Florida.

Numerous persons utilized by the United States acting on its behalf in the execution of its program for the distribution of said fertilizer in the State of Florida are fearful of the said "stop sale notices" and seizures and threats and unless the enforcement of the "stop sale notices" and the seizures and the carrying out of the said threats be enjoined, said persons will decline to execute the laws of the United States and the carrying out of the program of the United States will be frustrated.

9. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate and undisturbed possession of a certain lot of 19% superphosphate fertilizer, consisting of 54.15 tons, more or less. Said lot of fertilizer is part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

10. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-26963, entered into by the United States, through its Department of Agriculture, with Mutual Fertilizer Company, Savannah, Georgia, for the furnishing to the United States by said Company of 1,500 tons of said fertilizer. By direction of the United States and in the execution of its program more fully described above, said property was being shipped from Savannah, Georgia, to Monticello, Florida, via the Seaboard Air Line, consigned to Jefferson County Agricultural Conservation Association, an instrumentality and agency of the United States and acting on its behalf. Said Shipment was under Government Bill of Lading No. 2621276, in which the said Seaboard Air Line acknowledged

receipt of said fertilizer, therein described and referred to in the language of said Government Bill of Lading as "the public property hereinafter described."

11. On September 10, 1942, the following telegram was sent by defendant Nathan Mayo to the Administrative Officer of the said Jefferson County Agricultural Conservation Association:

September 10, 1942.

FRANKLIN W. SMITH, Administrative Officer,
Jefferson County Agricultural Association,
Monticello, Florida.

This is your official notice that car of superphosphate consigned to you by Mutual Fertilizer Company, Savannah, Georgia, is under legal stop sale notice as provided by Florida Fertilizer Law account not being registered and tagged. Am wiring manufacture to arrange registration and tagging immediately so goods may be released.

NATHAN MAYO
Commissioner of Agriculture.

Charge to Inspection Bureau.
RUSH

On September 11, 1942, defendant Roy Hutchinson issued a "stop sale notice," directing Franklin W. Smith, Administrative Officer of the Jefferson County Agricultural Conservation Association, as aforesaid an instrumentality and agency of the United States and acting on its behalf, to withdraw from "sale" and hold subject to further instructions the said lot of superphosphate fertilizer. Said "stop sale notice" is one of the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

12. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate possession of three certain lots of 20% superphosphate fertilizer consisting of 50 tons each, more or less. Said lots of fertilizer are part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

13. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-27003, entered into by the United States, through its Department of Agriculture, with Georgia Fertilizer Company, Valdosta, Georgia, for the furnishing to the United States by said Company of 5,000 tons of said fertilizer. By direction of the United States said lots were being shipped by rail from Valdosta, Georgia, consigned respectively to the Agricultural Conservation Association of Walton County, Florida; Gadsden County, Florida; and Madison County, Florida at their respective offices in DeFuniak Springs, Florida; Quincy, Florida; and Madison, Florida. Each of the three said County Agricultural Conservation Associations are instrumentalities and agencies of the United States acting on its behalf. Each of the three said shipments was under a Government Bill of Lading like that referred to and described in paragraph 10 hereof and each was described therein and referred to as "the public property hereinafter described."

14. On or about September 11, 1942, defendant Nathan Mayo, and his subordinates, purporting to act as inspectors of the Florida State Department of Agriculture, Inspection Bureau, under the purported authority of the Florida Commercial Fertilizer Law issue "stop sale notices" directing that the three said lots be withdrawn from "sale" and held subject to further instructions. These "stop sale notices" are among the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

15. In the carrying out of the program of the United States time is of the essence, due to the fact that the planting season in the State of Florida for certain soil conserving crops with which the superphosphate fertilizer herein referred to was to be used would expire on or about October 15, 1942, and due to the continuing and persistent need therefor on other crops as shown in the affidavit of William G. Finn (No. 1), sworn to October 17, 1942, and due to the acute necessity for obtaining nitrogen from the said crops to replace chemical nitrogen unavailable for fertilizer purposes due to its use in munitions required by the existing war emergency. The threatened injury to the United States

is imminent and irreparable, and the United States has no adequate remedy at law nor any remedy save injunction by this court.

The Court files the following conclusions of law:

1. The Court has jurisdiction of the subject matter and parties to plaintiff's complaint, but not of the defendant's counterclaim.

2. Apart from plaintiff's right to a final judgment as a matter of law, plaintiff is entitled to a preliminary injunction continuing in effect the terms of the temporary restraining order.

3. There is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law as prayed in the complaint.

4. The motion of defendants to dismiss the complaint should be denied.

5. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction should be granted, and the defendants' motion to add parties should accordingly be denied.

6. The property and transactions of the United States and its agencies referred to in the findings of Fact are under the Constitution of the United States immune from and not subject to the application of the Florida Commercial Fertilizer Law relied on by defendants.

7. The application by defendants of the Florida Commercial Fertilizer Law to the property and transactions of the United States as described in the Findings of Fact is in violation of the Constitution of the United States, and beyond the power of the defendants as officers of the State of Florida.

8. The distribution of the fertilizer and fertilizer materials by the United States and its agencies as described in the Findings of Fact is, under the Constitution of the United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida Commercial Fertilizer Law.

9. The legal defenses set forth in defendants' answer should each be overruled.

Let the foregoing Findings of Fact and Conclusions of Law be filed, and judgment be entered accordingly.

Dated October 26, 1942.

(S.) (LEON MCCORD,
United States Circuit Judge.
(S.) AUGUSTINE V. LONG,
United States District Judge.

Dissenting:

(S.) CURTIS L. WALLER,
United States District Judge.

EXHIBIT "D".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff,*

v.

NATHAN MAYO, et al., *Defendants.*

Order On Motions and Final Decree.

This cause came on to be heard and was argued by counsel and on consideration thereof, the Court having filed its Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed as follows:

1. The motion of defendants to dismiss the complaint is denied.

2. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction is granted; and defendant's motion to add parties is accordingly denied.

3. The application of plaintiff for a preliminary injunction is granted.

4. The motion of plaintiff for summary judgment enjoining the defendants as prayed in the complaint and for a

final permanent injunction in the terms of the temporary restraining order heretofore issued is granted.

And it is Further Ordered, Adjudged and Decreed as follows:

5. The defendants above named and each of them, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them are hereby permanently enjoined from: Taking any steps to enforce "stop sale notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribution of fertilizer and from threatening to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer.

6. The defendants are hereby required to vacate and set aside the "stop sale notices" and seizures which are the subject matter of this action.

7. The Court reserves jurisdiction of this cause and of the parties for the purpose of enforcement of this decree and for the granting of such further relief as may be appropriate.

Dated October 26, 1942.

(S.) LEON MCCORD,
United States Circuit Judge.
(S.) AUGUSTINE V. LONG,
United States District Judge.

Dissenting:

(S.) CURTIS L. WALLER,
United States District Judge.

(4612)

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FILE COPY

Supreme Court of the United States

October Term 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,
Appellants,

—VS.—

THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF OF APPELLANTS

J. TOM WATSON,
Attorney General of Florida;

JAMES H. MILLICAN, JR.,
FRED M. BURNS,
Assistant Attorneys General of Florida;

H. E. CARTER,
WM. C. PIERCE,
Counsel for Appellants.

Brief adopted by the undersigned as amici curiae:

WILLIAM N. MCQUEEN, as *Acting Attorney General* in behalf of the State of Alabama;

EUGENE STANLEY, as *Attorney General* in behalf of the State of *Louisiana;*

HARRY MCMULLAN, as *Attorney General* in behalf of the State of North Carolina;

THOMAS J. HERBERT, as *Attorney General* in behalf of the State of Ohio.

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Supreme Court of the United States

October Term 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,
Appellants,

—VS.—

THE UNITED STATES OF AMERICA,
Appeliee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

I.

OFFICIAL REPORT OF OPINION BELOW

The opinion of the District Court of the United States for the Northern District of Florida, in the case from which this appeal is taken, is reported under the title of United States vs. Mayo, et al., in 47 Fed. Supp. (Adv.) 552.

II

CONCISE STATEMENT OF JURISDICTION

Direct Appeals, when allowed.

The jurisdiction of the Supreme Court of the United States, to review the decree from which the appeal herein was taken, is conferred by sections 238 and 266 of the Judicial Code of the United States (28 U. S. C. A. sections 345 (3) and 380), which sections provide that an appeal may be taken, from the District Courts of the United States, directly to the Supreme Court of the United States from orders and decrees granting or denying interlocutory or permanent injunctions suspending

or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to such statute.

Defendants are state officers.

The appellant, Nathan Mayo, is the duly elected, qualified and commissioned Commissioner of Agriculture of the State of Florida, and the appellant, Roy Hutchinson, is a duly appointed, qualified and commissioned inspector under the Commissioner of Agriculture of the State of Florida. The said appellants were, by the decree appealed from, restrained and prohibited from enforcing the Florida Commercial Fertilizer Law (Chapter 576, Florida Statutes, 1941)and from carrying out the duties imposed upon them by said laws, insofar as it relates to fertilizer and fertilizer materials brought or shipped into the State of Florida, by or under the direction of the United States, for use upon lands within and under the jurisdiction of the State of Florida, not owned by or under the exclusive jurisdiction of the United States.

Florida Commercial Fertilizer Law.

The Florida Commercial Fertilizer Law (Chapter 576, Florida Statutes, 1941) in substance provides that every person, or his agent, engaged in the business of importing, preparing, mixing or manufacturing commercial fertilizer and fertilizer materials for sale or use in the State of Florida, either direct to the consumer or by or through other media of distribution, shall, before offering the same for sale or use in said state, register the name and guaranteed analysis of such fertilizer or fertilizer materials with the Commissioner of Agriculture

of the State of Florida (Section 576.03, Florida Statutes, 1941); notify the said Commissioner of shipments of fertilizer and fertilizer materials into this state, giving certain information acquired in connection therewith (Section 576.05, Florida Statutes, 1941); show on, or by a tag attached to, each bag or package of fertilizer or fertilizer materials sold or offered for sale or use, the guaranteed analysis thereof (Section 576.07, Florida Statutes, 1941); and pay an inspection fee, for the purpose of defraying the expense of the enforcement of the said Florida Commercial Fertilizer Law, of 25¢ per ton of fertilizer or fertilizer materials sold or offered for sale or use in the State of Florida (Section 576.11, Florida Statutes, 1941). The Commissioner of Agriculture and the inspectors under the Commissioner of Agriculture are charged with the enforcement of the said Florida Commercial Fertilizer Law and with the inspection and analysis of such fertilizer and fertilizer materials, for the purpose of ascertaining and determining whether or not they comply with the said Commercial Fertilizer Law (Sections 19.30 to 19.44, inclusive, 19.47 to 19.53, inclusive, and Chapter 576, Florida Statutes, 1941). The validity of the aforesaid Commercial Fertilizer Law is involved in this suit and it was held by the three judge Federal District Court to be inapplicable to fertilizer and fertilizer materials brought into the State of Florida, by or under the direction of the United States or its agencies, and disposed of for use on lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States, because of constitutional grounds and the sovereignty of the United States.

Substantial questions involved.

The questions involved in this appeal are substantial in character, in that they involve the question of the

extent of the powers of the several states to make inspection of fertilizer and fertilizer materials brought or shipped into their borders, by or under the direction of the United States for use upon lands under the jurisdiction of such states and not owned or controlled by the United States. A determination of the questions involved in this appeal will also be a substantial determination of the question of the right of states to inspect seeds, plants, bulbs, nursery stock and similar articles brought or shipped into such states under similar circumstances. The questions involve the extent of the sovereign powers of the United States as against the powers of the states to make inspection of the materials aforesaid, that is, states' rights and police power. Also whether the power to levy inspection fees in aid of regulatory laws has been expressly reserved to the state and expressly declared to be a state right by Section 10, Article I, Clause 2 of the United States Constitution, even beyond the power of Congress to grant immunity, although it is not necessary in this particular case to go that far, inasmuch as Congress has indicated no such intention. The foregoing questions involved have not heretofore been determined by the Supreme Court of the United States.

Cases believed to sustain jurisdiction.

Query v. U. S., 316 U. S. 486, 62 S. Ct. 1122, 86 L. ed. 1616;

Frank Eicholz v. Public Service Commission of the State of Missouri, 306 U. S. 268, 83 L. ed. 641;

Driscoll v. Edison Light & Power Co., 307 U. S. 104, 83 L. ed. 1134, 59 S. Ct. 715;

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Smith v. Wilson, 273 U. S. 388, 71 L. ed. 699, 47 S. Ct. 385;

J. Smylie Harkness v. Valentine K. Irion, Commissioner, 278 U. S. 92, 73 L. ed. 199;

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Oklahoma Natural Gas Co. v. Campbell Russell, et al., constituting Corporation Commission of the State of Oklahoma, 261 U. S. 290, 67 L. ed. 659, 43 S. Ct. 353;

Durrant v. Bennett, 54 F. (2d) 634.

III

STATEMENT OF THE CASE

We will give the Court a brief resume of the progress of the case in the Court below, to be followed by an analysis of the pleadings and evidence, and a conclusion.

(a) Progress of the case.

The complaint was filed by appellee here as plaintiff in the Court below, in the United States District Court for the Northern District of Florida, asking for a preliminary and permanent injunction restraining Nathan Mayo, who is the Commissioner of Agriculture of the State of Florida, and Roy Hutchinson who is an inspector in the Department of Agriculture of the State of Florida.

The sworn bill was filed on September 19, 1942 (R 1) together with an affidavit of Joseph L. Orr, Acting Director, Division of Special Programs, Agricultural Adjustment Administration (R 9), with exhibits. On the same day District Judge Augustine V. Long, on the showing of alleged unconstitutional action and irreparable in-

jury, issued a temporary restraining order and required defendants to show cause before the Court on September 29, 1942, why preliminary injunction should not issue (R 47). The order of September 19, 1942 was extended by successive orders (R 49, 51, 52). On September 28, 1942 order was entered convening three judge District Court (R 50) and the hearing set for October 26, 1942.

On October 25, 1942 answer was filed by Nathan Mayo and Roy Hutchinson answering bill and setting up affirmative defenses charging the United States and its agencies with deliberately and intentionally attempting to evade enforcement of the Florida Commercial Fertilizer Law (R 62), setting out that Florida has sufficient manufacturers to furnish all Florida fertilizer (R 62), that officials of the Agricultural Adjustment Administration have refused Florida manufacturers permission to deliver to Florida farmers (R 63) and asking for affirmative relief and declaratory judgment (R 64).

On October 26, 1942 the United States filed Reply to Counter-claim and prayed that the counter-claim be dismissed and no declaratory judgment be granted except in conformity with the general prayer of the Bill of Complaint (R 74). At the same time affidavits were filed on behalf of the United States (R 75, 78, 81) to deny facts set out in defendants' Answer, and a chart showing estimated Distribution of Fertilizer by States (R 86).

The State of Florida introduced affidavits of J. J. Taylor, State Chemist of Florida (R 101, 102), V. L. Fuqua, State Chemist of Tennessee (R 103) and J. J. Woodside, Director of Seed Laboratory Division of North Carolina (R 104)) as evidence that materials shipped into states by the Agricultural Adjustment Administration were be-

low standard required by respective states and was a deliberate attempt of Agricultural Adjustment Administration to evade State Inspection Laws.

On October 26, 1942, after hearing on preliminary injunction, the parties, after the Court indicated its desire to enter permanent injunction, on motion for summary judgment by plaintiff, waived ten (10) days notice requirement of Rule 56 (c) (R 109).

The three judge District Court was convened at Tallahassee, Florida, composed of Hon. Leon McCord, United States Circuit Judge, Hon. Augustine V. Long, United States District Judge and Hon. Curtis L. Waller, United States District Judge (now Circuit Judge). On the same day Findings of Fact and Conclusions of Law was entered (R 109), which recited that the plaintiff's application for preliminary injunction was granted; and on oral motion of plaintiff for summary judgment under Rule 56(c), the ten (10) day notice requirement having been waived, the Court entered its findings of fact and conclusions of law. The Court found, among other things, that defendants, under purported authority of the Florida Commercial Fertilizer Law, were interfering with the United States in the exercise of one of its sovereign functions (R 111); and that the United States and its property were immune from the Florida Commercial Fertilizer Law (R 112). The Court further found there was no genuine issue as to any material fact and plaintiff was entitled to judgment as a matter of law (R 115) and that the property and transactions referred to in the findings of fact were beyond application of the Florida Commercial Fertilizer Law and the legal defenses set forth in defendants' answer were overruled (R 115). Hon. Curtis L. Waller dissented (R 117).

On October 26, 1942 order on motion and final decree was entered (R 116) (See Appendix "A"). Hon. Curtis L. Waller wrote a dissenting opinion (R 117) (See Appendix "B").

On January 13, 1943, defendants procured order allowing appeal from the order of the three judge Court (R 131). The assignments of errors urged as error the rulings made by the Court on the merits of the case and the propriety of disposing of the case on motion for summary judgment (R 127).

(b) Analysis of pleadings and evidence.

The sworn bill of the United States, mentioned in (a) above, alleged that the plaintiff was engaged in the distribution of fertilizer in Florida as a part of the soil conservation program of the United States under Section 1 of the Soil Conservation and Domestic Allotment Act (16 U. S. C. Section 590g) (R 2); that the defendants were interfering with and obstructing the United States in carrying out its program by issuing "stop sale notices" and threats to seize and sell the fertilizer (R 3); that the United States, its property and transactions were outside the scope of the police power of the state (R 4); that the United States entered into contract and purchased fertilizer from the Mutual Fertilizer Company, Savannah, Georgia, and shipped such fertilizer into Florida (R 6) and entered into contract and purchased fertilizer from the Georgia Fertilizer Company, Valdosta, Georgia, and shipped such fertilizer into Florida (R 6); that "stop sale notices" were issued against three lots of such fertilizer shipped in interstate commerce (R 7), and caused one shipment to be seized.

The prayer was for preliminary and permanent injunction to restrain defendants from applying the Florida

Commercial Fertilizer Law to the United States, its property, transactions or persons engaged in its behalf in carrying out its program (R 8). Attached was affidavit of Joseph L. Orr (R 9) setting out in detail the method of carrying out the government program and facts purporting to sustain the allegations of the bill. Other exhibits attached to the bill were the bids of the fertilizer companies, Exhibits 1 and 2 (R 14, 28), and acceptance of proposal of Mutual Fertilizer Company (R 27) and Georgia Fertilizer Company (R 43), which acceptance was by the Agricultural Adjustment Administration together with other exhibits.

The known defendants, Nathan Mayo and Roy Hutchinson, answered the bill setting up seven defenses attacking the sufficiency of the bill (R 53) and the eighth defense answered generally (R 56) setting up the affirmative defenses that the United States was merely acting as a conduit or agency for the transmission of Florida fertilizer, and charged the United States, and its agencies, with deliberately intending to evade enforcement of the Florida Commercial Fertilizer Law and preventing inspection of fertilizers sold in the State of Florida, and further set up that the State has ample manufacturers to furnish all Florida farmers at lower costs, and that the Agricultural Adjustment Administration refused to permit delivery by such manufacturers and that the Soil Conservation and Domestic Allotment Act provides for making payment to farmers of an amount which contemplates payment of all costs including inspection fees.

The State of Florida filed a counter-claim for declaratory relief (R 64) reaverring the affirmative defenses and set up the sections of the Florida Commercial Fertilizer Law requiring payment of the inspection fee and that

provision is made in the Soil Conservation and Domestic Allotment Act for payment of the fertilizer materials and demanding that the Court adjudge whether or not the distribution of fertilizer materials, by the United States, is free and unrestricted from the fertilizer inspection laws of the State of Florida and whether or not the manufacturer or any other person is liable for the payment of the inspection fees. Such answer was sworn to by the Commissioner of Agriculture (R 71). On October 26, 1942, the United States filed its reply to the counter-claim for declaratory relief making general denial and demanding that the counter-claim be dismissed and no relief be granted and no declaratory judgment be made except in pursuance of the general prayer of the complaint (R 72), which reply was sworn to by an official of the Agricultural Adjustment Administration. To sustain the reply to the counter-claim, affidavits were filed on behalf of the United States government, as follows: affidavit of William G. Finn, No. 1 (R 75), which affidavit, among other things, sought to justify the purchase of fertilizer for Florida farmers outside the State of Florida; affidavit of William G. Finn, No. 2 (R 78), which affidavit, among other things, sought to establish inspection of fertilizer brought into the State by the United States. The defendants produced affidavits of J. J. Taylor, V. L. Fuqua and J. J. Woodside (R 101, 102, 103), which showed facts that materials brought into the various states by the Agricultural Adjustment Administration did not comply with inspection laws of such states.

On hearing for preliminary injunction, on October 26, 1942, the Court granted the application for preliminary injunction (R 116) and, on oral motion of the plaintiff for summary judgment, expressed desire to enter permanent injunction and requested defendants to waive ten

(10) day notice in order that such permanent injunction might be granted. Stipulation was filed by the plaintiff and the defendants, waiving the ten (10) day notice rule required by Rule 56 (c) of the Federal Rules Practice, Civil Procedure (R 109). On motion for summary judgment the defendants had full benefit of their pleadings and evidence, yet in spite of the evidence and defenses that the defendants had produced, or could produce, the Court ruled there was no defense to the action brought by the plaintiff.

(c) Conclusion.

Each year the Agricultural Adjustment Administration presents to farmers a program to preserve and improve the fertility of their soil. Basically, this is an offer to make payments at prescribed rates for carrying out specified practices that are deemed, by the Agricultural Adjustment Administration, particularly important in this respect. Certain of these practices involve the application to the soil of superphosphates in connection with the planting of legumes and grasses. Instructions are issued to the farmers who participate in the program, which must be followed if the farmers are to obtain the benefits. In carrying out the program the Agricultural Adjustment Administration formulated a plan by which, superphosphates, among other products, may be obtained by the farmers in advance of performance. Subsequently when performance payment is made the value of the materials received is deducted from the total payments due. In other words, materials are supplied to farmers in lieu of payment which the farmers would otherwise receive for carrying out the practices under the conservation program.

The fertilizers are purchased by the United States with funds appropriated by Congress in the Department of

Agriculture Appropriation Act, approved July 22, 1942. These fertilizers are purchased in various states and delivered to agents of the Agricultural Adjustment Administration and by them delivered to farmers carrying out the practices provided in the Act. These materials are purchased under contract and are shipped on government bill of lading to destinations specified by the Agricultural Adjustment Administration. In the instant case the United States entered into contracts with the Mutual Fertilizer Company of Savannah, Georgia (R 14) and Georgia Fertilizer Company of Valdosta, Georgia (R 28). Pursuant to the terms and conditions of such contracts the Agricultural Adjustment Administration ordered that shipments of superphosphates, be made to various destinations in the State of Florida, including the shipments that were seized or detained under the direction of the Commissioner of Agriculture and inspectors of the Commissioner of Agriculture of the State of Florida. The Commissioner of Agriculture issued "stop sale notices" and by its terms, required that the county administrative officer of the Agricultural Conservation Association, to which one of the aforesaid shipments of superphosphate was made, withdraw from sale or delivery the contents of the car of superphosphates, and to hold the same subject to instruction from the Commissioner of Agriculture of the State of Florida because such superphosphates were not registered and tagged in accordance with the Florida Commercial Fertilizer Law and because they had not been inspected and passed by the aforesaid Inspection Bureau, and because the inspection fees thereon had not been paid (see discussion of Florida Commercial Fertilizer Law under "II").

Similar "stop sale notices" were served upon other consignees who were shipped fertilizer under like circumstances.

The purpose of the Florida Commercial Fertilizer Law is for the protection of the people of the State of Florida and there are no provisions in the laws of the United States, or rules or regulations of the Agricultural Adjustment Administration, or any other department of the United States, which adequately protects the people of the State of Florida against the use of inferior fertilizer furnished the farmers of the State of Florida under the Soil Conservation and Domestic Allotment Act. There being no adequate inspection or analysis of fertilizers by the federal government, the use of the same on lands of the State of Florida, might result in great damage and loss to the people of the State of Florida.

IV

SPECIFICATION OF ERRORS INTENDED TO BE URGED

Appellants urge that the District Court erred in entering the decree appealed from because:

First Specification: Neither in the federal constitution nor any Act of Congress, relating to the subject matter of this suit, is there any intention indicated or shown that the federal government, through its agency, the Agricultural Adjustment Administration, in the carrying out of its functions of furnishing fertilizer to Florida farmers under the soil building and conservation program of said Agricultural Adjustment Administration, should be exempt or immunized from compliance with reasonable state regulatory measures and the payment of reasonable state inspection fees for such regulatory services, upon such fertilizer which is to be used upon Florida soil over which the state has not relinquished its sovereignty. Assignments of Error 1, 2, 4, 6, 7 and 8 (R 127, 128).

Second Specification: In the carrying out of the program specified in the preceding specification, the Agricultural Adjustment Administration may not lawfully refuse compliance with reasonable state regulations, and the payment of reasonable state inspection fees to defray the expenses thereof, enacted in the exercise of the state's inherent police power. Assignments of Error 15 (R 130).

Third Specification: In the carrying out of the soil building and conservation program disclosed by the record in this cause, and mentioned in the first specification, the Agricultural Adjustment Administration is acting merely as a service agent or conduit for the fertilizer manufacturer and/or the Florida farmer, and, viewed in such light, there is no unreasonable burden cast upon the federal government or its agency, the Agricultural Adjustment Administion, by compliance with the state regulatory law governing the importation of fertilizer into Florida for use upon Florida soil. Assignments of Error 5 and 16 (R 128, 131).

V.

SUMMARY OF ARGUMENT

First Specification: The Florida Commercial Fertilizer Law imposes a reasonable inspection fee to defray the expenses of enforcing the inspection and regulatory provisions of the Act, the purpose of which is to guarantee the proper standard of quality and purity of fertilizer consumed by the Florida farmer upon Florida soil, and to also insure proper weights and quantity to the farmer. Certainly the imposition of a reasonable inspection fee, merely for the purpose of providing inspection services, would stand in no worse category with respect to the right of immunity therefrom than would the case of a state tax exacted for the purpose of raising revenue. And in case of such a state tax, the rule has been, since the

case of GRAVES v. NEW YORK, 306 U. S. 466, 83 L. ed. 927, that immunity of the federal government from state taxation may not be upheld in the absence of an intention disclosed by Congress to provide such immunity, and that mere silence on the part of Congress is not sufficient. No Act of Congress relating to the subject matter of the furnishing of fertilizer or fertilizer materials to Florida farmers under the soil building program of the Agricultural Adjustment Administration either declares or indicates an intention to provide immunity to the government agency from complying with the Florida Inspection Law for such material, nor is there any provision in the federal constitution which indicates an intention to provide immunity.

On the contrary the federal constitution itself, in Section 10, Article I, Clause 2, expressly recognizes the inherent and reserved power and authority of the States to enact inspection laws and exact reasonable fees to defray expenses of administering such laws. This constitutional provision has been construed by this court in the PATAPSCO GUANO CO. v. BOARD OF AGRICULTURE OF NORTH CAROLINA, 171 U. S. 345, 18 S. Ct. 862, 43 L. ed. 191 case, to apply to such products imported into the state not only from a foreign country but in interstate commerce from another state. Not only is there thus a clear constitutional expression on the point, but the very Act of Congress granting the appropriation of monies out of the national treasury for the purchase of the identical fertilizers and fertilizer materials involved in the instant case carries the affirmative provision that such monies be used not only to pay the actual cost of purchasing the product but also to pay all expenses necessary in making such grants to the farmer, including all or part of the costs incident to the delivery thereof. While the words "State

Inspection Fees" are not expressly used in such appropriation act, yet the language of the proviso is such as would seem to clearly include and in fact contemplate payment of such inspection fees.

If the intention, therefore, of both Congress and the Constitution itself is to the effect that such inspection fees should be paid, there may be no possible legitimate claim to federal immunity.

The issue is not whether the state regulatory act contains any affirmative provision that it should be binding upon any federal agency, but whether there is any indication in a federal act or the federal constitution that such federal agency should be immunized from compliance with the state law. This is so because the enactment of state inspection laws is expressly declared and recognized by the constitution itself and must be presumed, absent any provision of exemption, to be all embracing and operative upon all products sold within or coming into the state.

Second Specification: The Constitution of the United States is a document of delegated powers only and all powers not expressly granted to the federal government are expressly reserved to the states themselves. As to such reserved powers, the state is as independent of the federal government as the federal government, within its delegated sphere, is independent of the state. And in the exercise of power by the state, not delegated to the federal government, such exercise is unconditionally sovereign. Each of the dual governments is supreme within its field.

The enactment of state regulatory laws, in the exercise of the reserved police power of the state, is uniformly recognized, and a regulatory program for insuring proper quality and purity, as well as proper weight and measurement, of fertilizer and fertilizer materials, is a well known

and well established exercise of such police power. Such inspection regulation carries with it the right to impose reasonable fees for the purpose of enforcement.

Such inspection laws are not, in themselves, regulations of commerce. Nor does the fact that the national government is supreme within its delegated field remove it or its agencies from compliance with such state inspection laws when there is no unreasonable burden upon the national government. The fertilizer is brought into the State of Florida to be used upon Florida soil. The state has complete sovereignty over that soil. It is not upon property owned or even leased by the national government, PENN DAIRIES, INC. and THE UNITED STATES OF AMERICA v. THE MILK CONTROL COMMISSION, THE COMMONWEALTH OF PENNSYLANIA, decided March 1, 1943, not yet reported. The state law is designed not only to protect the Florida farmer but to preserve and protect Florida soil from fertilizer and fertilizer materials of inferior quality. If there were an undue interference in the performance by the Agricultural Adjustment Administration of any function granted by Congress, there might be substance to the argument of immunity from the state law but here there is no undue interference nor unreasonable burden on the federal agency, and the exercise of the state's inherent police power should be nothing less than complete and inclusive.

Third Specification: The mechanics of the program of the Agricultural Adjustment Administration, in the procuring and furnishing to Florida farmers of fertilizer to go into Florida soil, shows that at the most the federal agency is acting merely as a service medium or conduit by which, or through which, the manufacturer sells the fertilizer and the Florida farmer buys it. Congress appropriates money with which the Agricultural Adjustment

Administration may contract to purchase fertilizer from the manufacturers, to be used in the program. The Soil Conservation and Domestic Allotment Act permits benefit payments to be made to farmers participating in the program, in return for carrying out the farming practices prescribed, and further provides that the cost of such materials furnished him, such as fertilizer, shall be deducted from such payments. Thus in the last analysis the manufacturer sells the fertilizer and the Florida farmer buys it and pays for it. The farmer reimburses the government, not only the actual purchase price of the material, but also all costs and expenses incurred in its delivery to the farmer. In procuring the fertilizer and delivering it to Florida farmers, the federal government incurs no economic burden. Nor does it incur any burden other than economic because of the state regulatory law.

The courts in ruling upon the applicability of statutes to a particular situation must, of necessity, look into the substance of the transaction, even to the extent of piercing the veil with which it is covered. The niceties of argument as to ownership of the materials from the time they leave the hands of the manufacturer to the time when they become commingled with Florida soil, may not be allowed to obscure the real character of the entire transaction. Immunity from compliance with reasonable state regulatory measures designed to protect Florida farmers and Florida soil over which the state exercises sovereignty may not be defeated upon such a narrow premise. The fertilizer goes direct by railroad transportation from the fertilizer manufacturer to the Florida consumer. The Agricultural Adjustment Administration program merely provides the mechanics for effecting the delivery. Under the federal act itself the Florida farmer may procure his own fertilizer, independent of the Agricultural Adjustment

Administration, and if he does, there is no question of the requirement of compliance with the state law. If the fertilizer goes through the Agricultural Adjustment Administration there is no distinction in the substance or in the result of the transaction.

VI.

ARGUMENT

First Specification:

NEITHER IN THE FEDERAL CONSTITUTION NOR ANY ACT OF CONGRESS, RELATING TO THE SUBJECT MATTER OF THIS SUIT, IS THERE ANY INTENTION INDICATED OR SHOWN THAT THE FEDERAL GOVERNMENT, THROUGH ITS AGENCY, THE AGRICULTURAL ADJUSTMENT ADMINISTRATION, IN THE CARRYING OUT OF ITS FUNCTIONS OF FURNISHING FERTILIZER TO FLORIDA FARMERS UNDER THE SOIL BUILDING AND CONSERVATION PROGRAM OF SAID AGRICULTURAL ADJUSTMENT ADMINISTRATION, SHOULD BE EXEMPT OR IMMUNIZED FROM COMPLIANCE WITH REASONABLE STATE REGULATORY MEASURES AND THE PAYMENT OF REASONABLE STATE INSPECTION FEES FOR SUCH REGULATORY SERVICES, UPON SUCH FERTILIZER WHICH IS TO BE USED UPON FLORIDA SOIL OVER WHICH THE STATE HAS NOT RELINQUISHED ITS SOVEREIGNTY.

Appellants' contention on this point is:

(1) There is no intention, express or implied, evidenced by Congress in any of its acts relating to the carrying out of the functions under the Agricultural Adjustment Administration program to exempt or immunize the federal

government, or its agency, the Agricultural Adjustment Administration, from compliance with reasonable state regulations covering commodities involved in the carrying out of such Agricultural Adjustment Administration program and payment of reasonable inspection fees imposed in and by said state regulations for the purpose of defraying expenses thereof, and in the absence of such affirmative intention to make such exemption the courts must presume no intention to have existed (Footnote 1); and

(2) If Congress has evidenced any intention at all in the matter of exempting or immunizing the federal government, or its agency, the Agricultural Adjustment Administration, from compliance with such reasonable state regulations, such intention is to the effect that such state regulations be complied with and the state inspection fees paid.

Whatever the law may have been prior to GRAVES v. NEW YORK, supra, the rule became settled in that case that:

> "When exemption from state taxation is claimed on the ground that the federal government is burdened by the tax and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect of the alleged burden, and if it appears that there is no ground for implying a constitutional immunity, there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity."

It was further held in that case:

"Silence of Congress implies immunity no more

FOOTNOTE 1—The University of Chicago Law Review, at page 351, Vol. 9 thereof, in commenting on the case of ALABAMA VS. KING AND BOOZER, 314 U. S. 1, 86 L. ed. 1, 62 St. Ct. 43, said:

> "It is not impossible that the court recognizes a distinction between government and instrumentality, the former operating under a constitutional immunity, the latter being immunized only when Congress specifically grants them immunity."

The Agricultural Adjustment Administration, a government agency, was granted no immunity but rather the Act providing for making grants to farmers, discussed hereafter, seemed to contemplate payment of inspection fees.

than does the silence of the Constitution."
(text 306 U. S. 480)

Applying the foregoing rule to the case at bar it would be incumbent upon the federal government, or its agency, the Agricultural Adjustment Administration, in order to successfully resist compliance with the Florida Commercial Fertilizer Law and the payment of the inspection fee imposed thereby, to point to some affirmative provision of an Act or Acts of Congress from which an intention may be reasonably gathered that Congress meant for the Agricultural Adjustment Administration not to be bound to comply with the state laws or to pay the state fees. Mere silence would afford no basis for the contention of immunity under the case of GRAVES v. NEW YORK, supra. And when the various Acts of Congress having to do with the program of the Agricultural Adjustment Administration in furnishing fertilizer to Florida farmers in furtherance of the soil building and conservation program are examined, there can be found no expression in any word or clause of those Acts to show any intention or intimation on the part of Congress that the Agricultural Adjustment Administration should be granted immunity (Footnote No. 2).

FOOTNOTE No. 2—The doctrine of implied immunity originally announced in M'Culloch vs. The State of Maryland, et al, 4 Wh 316, 4 L. ed. 579, where it was recognized that states could not tax federal agencies, apparently was based on the "supremacy clause" (Clause 2, Article VI of the Constitution of the United States) and the ground laid down by Mr. Justice Holmes, "the power to tax is the power to destroy," has been modified by later cases. There seems to be numerous formulae to apply the doctrine of implied immunity which are discussed in Annotions on page 622 of Volume 140, A.L.R. It is necessary to consider none of them in the instant case if the theory of implied immunity is that announced in the GRAVES case, supra, to-wit:

> "The theory of the tax immunity of either government, state or national, and its instrumentalities, from taxation by the other, has been rested upon an implied limitation on the taxing power of each, such as to forestall undue interference, through the exercise of that power with the governmental activities of the other."

Therefore implied immunity from taxation under the modern theory is not based on a limitation implied from the constitution itself exempting the United States and its agencies from taxation. but such immunity arises from the restraint of the state itself to interfere with the governmental activities of the federal government. It is not contended that the Inspection Fee is a tax but when there is no restraint on the state but a positive authority set out in the constitution of the United States to fix an "inspection fee" it cannot be said that there is an implied exemption of the federal government from payment of the fee or that the fee is such as to interfere with functions of government.

On the contrary, however, appellants here assert that, if any such intention on the point has been expressed or indicated by Congress, it is to the effect that the state regulatory laws should be complied with and the state inspection fees paid. In support of this contention appellants respectfully point out to the court that the current appropriation made by Congress for the purpose of providing funds for the carrying out of the identical function involved in this suit, namely, the procuring of fertilizer by or through the Agricultural Adjustment Administration and the furnishing of such fertilizer to Florida farmers, carries the following proviso:

> "Provided further, that such amount shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials, or any soil terracing services, making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary of Agriculture in the 1941 and 1942 programs under said Act of February 29, 1936, as amended; for the reimbursement of any federal, state, or local government agency for fertilizers, seeds, lime, trees, or other farming materials, or any soil terracing services, furnished by such agency; *and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof.*" (Italics ours).
> Public Law 674 (77th Congress) approved July 22, 1942.

The use of the language "payment of all expenses" and the further language "costs incident to the delivery thereof" would seem to not only include, but reasonably to contemplate, the payment of reasonable state inspection fees for defraying the actual expenses of inspecting the

very materials furnished to Florida farmers through the Agricultural Adjustment Administration, the purpose of which inspection is to insure a proper quality and proper quantity of the material to the consumer. And to that extent the state law is a distinct aid to the carrying out of the identical function performed by the Agricultural Adjustment Administration.

In further support of appellants' views on this point, it is found in the federal constitution itself that Section 10, Article I especially recognizes the power of the states to make a levy for the purpose of "executing its inspection laws". (Footnote No. 3) The Federal constitution being as it is a document granting powers only and expressly reserving to the states themselves all powers not expressly delegated, and the Constitution going further and expressly declaring and recognizing as being reserved to the states the levying of fees for the execution of the states' inspection laws, Section 10, Article I, supra, would seem to be a complete answer as to the intention of the Constitution with respect not only to the validity but also to the applicability and extent of such State Inspection Laws and the power of states to levy fees to carry out such laws.

Thus we have both an intention, expressed or indicated, by the fundamental law itself and also an Act of Congress concerning the identical subject matter of this suit. So that the situation here is even stronger than was the situation in the GRAVES case, supra, where the

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FOOTNOTE No. 3—In the court below the United States contended that the second clause of Section 10, Article I applied only to articles imported from or exported to foreign countries. In the case of Patapsco Guano Co. vs. Board of Agriculture, supra, the court, in discussing whether or not the Act providing for inspection of fertilizer and fertilizer materials, and charging 25 cents a ton for inspection, was in conflict with the commerce clause of the Constitution, said:

> "Clearly this cannot be so as to foreign commerce for Clause 2 of Section 10, Article I expressly recognizes the validity of state inspection laws and allows the collection of the amounts necessary for their execution and we think the same principle must apply to interstate commerce."

power of state taxation was upheld merely upon the theory of the silence of Congress as to any intention either way.

The reference in the GRAVES case, supra, to the effect that an exemption might be claimed "on the ground that the federal government is burdened by the tax", considering "the nature and effect of the alleged burden", may be disposed of upon the following considerations:

1st—The exaction in the instant case is not a tax at all but a mere inspection fee for producing funds necessary to defray the expenses of such inspection;

2nd—The fee is required by the Florida Statute to be paid by the manufacturer or agent for commercial fertilizer;

3rd—Regardless of whether the manufacturer or the Agricultural Adjustment Administration paid the fee the Florida farmer would ultimately pay the fee himself under the facts appearing in the record, and

4th—Even if it were a burden on the federal government, such burden would have to yield to the express power reserved in the state under Section 10, Article I, supra, for the doing of the identical thing now complained of, namely, imposing fees to execute its inspection laws.

Reliance was placed by appellee's counsel in the lower court, and probably will be renewed here, upon the contention that it must affirmatively appear from the state regulatory law that there was an intention on the part of the state legislature not to exempt the federal government before there could be an attempt to coerce compliance with the state law upon the federal agency. In other words it was suggested that if the state law is silent upon the subject of whether the federal agency

is or is not bound to comply with the law, then the courts must indulge the presumption that it was never intended to be applicable to the federal agency (Footnote No. 4). Such argument, while it may have found some support in earlier cases, proceeds upon a wrong premise, in that it entirely ignores the theory upon which the respective governments exercise their respective powers. State power is expressly reserved where not delegated, while federal power may not be exercised unless delegated. And in the exercise of its reserved powers the state is supreme within its field. This view has now found express recognition by this court in the GRAVES case, supra, where the State Income Tax Law of New York made no special reference to income derived from the federal government, and it was held applicable to such income for the reason that there appeared no intention upon the part of Congress, in any of its Acts, to immunize such income derived from federal authority. Also in the case cited in Footnote No. 4, supra, no reference was made in that law to instrumentality of government yet it was construed to apply thereto. Thus the courts look to the federal laws to find a basis for the claim of immunity rather than to the state laws to find a basis of applicability to the federal agency.

Second Specification:

IN THE CARRYING OUT OF THE PROGRAM SPECIFIED IN THE PRECEDING SPECIFICATION, THE AGRICULTURAL ADJUSTMENT

FOOTNOTE No. 4—Justice Roberts dissenting in James vs. Drevo Contracting Company, 302 U. S. 134, 82 L. ed. 155, 58 S. Ct. 208, said:

"No one denies the competence of the Congress to waive the immunity in whole or in part."

Also in Thirty-first Infantry Post Exchange vs. Posadas, 54 Philippine 866 (Writ of Certiorari denied 283 U. S. 839, 75 L. ed. 1449, 51 S. Ct. 489) the court expressed the opinion that by the Act of Congress in ratifying statute of Philippine Legislature imposing a sales tax but not expressly exempting sales to a United States Army Post Exchange, Congress had in effect, waived any immunity that such sales otherwise have had.

ADMINISTRATION MAY NOT LAWFULLY REFUSE COMPLIANCE WITH REASONABLE STATE REGULATION, AND THE PAYMENT OF REASONABLE STATE INSPECTION FEES TO DEFRAY THE EXPENSES THEREOF, ENACTED IN THE EXERCISE OF THE STATE'S INHERENT POLICE POWER.

With the exception of the powers surrendered to the federal government under the Constitution of the United States the several states are unconditionally sovereign within their respective territories (Ohio Life Insurance Etc., Company v. DeBolt, 16 How. 416, 14 L. ed. 997; Craig v. Missouri, 4 Pet. 410, 7 L. ed. 903; Skiriotes v. Florida, 313 U. S. 69, 61 S. C. R. 924, 85 L. ed. 1193). This sovereignty of the states, essential to their proper functioning under the Federal Constitution can neither be surrendered by them nor taken away by any form of legislation (Ashton v. Cameron County Water Improvement Company, 298 U. S. 513, 56 S. C. R. 892, 80 L. ed. 1309). Sovereignty to manage their own affairs reposes in the states, except only as the requirements of the Federal Constitution provide otherwise. (Madden v. Kentucky, 309 U. S. 83, 60 S. C. R. 406, 125 A. L. R. 1383, 84 L. ed. 590). The rights of the states, consistently with the Constitution and laws of the United States, to make and enforce their own laws, are equal to the right of the federal government to exert exclusive and supreme power in the field that by virtue of the United States Constitution belongs to it. (Colorado v. Symes, 286 U. S. 510, 52 S. C. R. 635, 76 L. ed. 1253). A widespread similarity of local conditions cannot confer upon Congress powers reserved to the states by the United States Constitution (United States vs. Butler, 297 U. S. 1, text 75, 56 S. C. R. 312, 102 A. L. R. 914, 80 L. ed. 477, text 493), and, not-

withstanding such similarity of local conditions, the states are supreme in respect to all powers reserved to them that are not expressly granted to the federal government (Carter v. Carter Coal Company, 298 U. S. 238, 56 S. Ct. 855, 80 L. ed. 1160).

In respect to all powers reserved to them by the Constitution the states are supreme—"as independent of the general government as that government within its sphere is independent of the states" (Collector v Day, 11 Wall. 113, 124, 20 L. ed. 122, 125). And since every addition to the national legislative power to some extent detracts from or invades the power of the states, it is of vital moment that, in order to preserve the fixed balance of power intended by the Constitution, the powers of the general government be not so extended as to embrace powers not within the express terms of the several grants of power or the implications necessarily to be drawn therefrom (Carter v. Carter Coal Company, supra).

Inspection statutes calculated to protect the residents of a state from fraud or imposition, or to safeguard the health and safety of its inhabitants, although they may affect interstate or foreign commerce, are, if their provisions are reasonable, usually held to be valid (Palmer Brothers v. Weaver, 3 Fed. (2nd) 333, affirmed in 266 U. S. 588, 45 S. C. R. 128, 69 L. ed. 455; Gulf Fisheries Company v. Darrouzet, 17 Fed. (2nd) 374, affirmed in 276 U. S. 124, 48 S. C. R. 227, 72 L. ed. 495; Jewel Tea Company v. Troy, 80 Fed. (2nd) 366).

In the case of PURE OIL COMPANY v. MINNESOTA, 248 U. S. 158, text 161 and 162, 39 S. C. R. 35, 63 L. ed. 180, text 188 and 189, the court said:

> "The principles of law applicable to the decision of the case thus before us are few, and they are

perfectly settled by the decisions of this court. "In the exercise of its police power a state may enact inspection laws, which are valid if they tend in a direct and substantial manner to promote the public safety and welfare, or to protect the public from frauds and imposition when dealing in articles of general use, as to which Congress has not made any conflicting regulation, and a fee reasonably sufficient to pay the cost of such inspection may constitutionally be charged, even though the property may be moving in interstate commerce when inspected. Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 357, 358, 361, 43 L. ed. 191, 195-197, 18 Supt. Ct. Rep. 862; New Mexico ex rel. McLean v. Denver & R. G. R. Co. 203 U. S. 38, 51 L. ed. 78, 27 Supt. Ct. Rep. 1; Asbell v. Kansas, 209 U. S. 251, 52 L. ed. 778, 28 Supt. Ct. Rep. 485, 14 Ann. Cas. 1101; Patterson v. Kentucky, 97 U. S. 501, 504, 24 L. ed. 1115, 1116; Savage v. Jones, 225 U. S. 501, 525, 56 L. ed. 1182, 1191, 32 Supt. Ct. Rep. 715."

In the case of PATAPSCO GUANO COMPANY v. BOARD OF AGRICULTURE, supra, the inspection law involved was substantially identical with the Florida Commercial Fertilizer Law where involved, which law was held valid against the contention that it violated the commerce clause of the United States Constitution. The North Carolina Statute involved in that case provided (1) an inspection fee for the "purpose of defraying the expenses connected with the inspection of fertilizers and fertilizer materials" in that state of twenty-five cents per ton, (2) required that every package of fertilizer and fertilizer material offered for sale in the state have thereon a plainly printed label or stamp showing certain things,

(3) made it a violation of the law to sell or offer for sale any fertilizer or fertilizer materials without having said label or stamp attached thereto, (4) certain inspection and analysis of the fertilizer by the state was required. The plaintiff questioned the validity of the inspection fee and the right to inspect fertilizer and fertilizer materials moving into the state in interstate and foreign commerce. In holding that inspection laws were not in themselves regulations of commerce, this court said:

> "Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of articles produced by the labor of a country and fit them for exportation, yet they are quite as often aimed at fitting them, or determining their fitness, for domestic use, and in so doing protecting the citizen from fraud. Necessarily, in the latter aspect, such laws are applicable to articles imported into, as well as to articles produced within a State."

And concerning the necessity of fertilizer inspection, this court further stated:

> "It is apparent that there is no article entering into common use in many of the States, and particularly the Southern States, the inspection of which is so necessary for the protection of those citizens engaged in agricultural operations, as commercial fertilizers. Certain ingredients, as ammonia or nitrogen, phosphoric acid and potash, make up the larger part of the value of these fertilizers, and without the aid of scientific analysis, the amount of these ingredients cannot be ascertained nor whether the fertilizer sold is of a

uniform grade. The average farmer was compelled, without an analysis, to depend on his sense of smell, or his success, or failure, during the previous year with the same brand or name, to determine the relative amounts of the essential ingredients, and the value of the materials. To protect agricultural interests against spurious and low grade fertilizers was the object of this law, which simply imposed the actual cost of inspection, necessarily varying with the agricultural condition of the various years. The label or tag could only be furnished after an analysis, the result of which was therein stated. In that light, the law practically required an anlysis in every case, and was sustained as so doing by the Supreme Court of North Carolina in State v. Norris, 78 N. C. 443."

With regard to the inspection fee this court said:

"It being competent for the State to pass laws of this character, does the requirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so as to foreign commerce, for clause two of section ten of article one expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce."

Upon the general question of state regulations affecting interstate commerce, the Supreme Court in the case of CALIFORNIA v. THOMPSON, 313 U. S. 109, text 113 and 114, 61, S. C. R. 930, 85 L. ed. 1219, text 1221 and 1222, said:

"* * * Ever since Wilson v. Black Bird Creek Marsh Co. 2 Pet. (US) 245, 7 L. ed. 412, and Cooley v. Port Wardens, 12 How (US) 299, 13 L. ed. 996, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which because of their local character and their number and diversity may never be adequately dealt with by Congress. Because of their local character, also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. Notwithstanding the Commerce Clause, such regulation in the absence of Congressional action has, for the most part, been left to the states by the decisions of this Court, subject only to other applicable constitutional restraints. See cases collected in Di Santo v. Pennsylvania supra (273 US 40, 71 L. ed. 528, 47 S Ct. 267)."

From the foregoing it would appear that the state regulatory law here involved is valid in requiring the inspection of fertilizers sold or brought within the State of Florida unless it could be successfully asserted that the federal agency may have implied immunity upon the claim of federal supremacy. It is submitted by appellants that such claim is unsubstantial and, under the facts disclosed by this case, untenable.

In the case of CARTER v. CARTER COAL COMPANY, supra, (text 1180 L. ed.), this court upon the question

of the respective powers of the federal and state governments, said:

> "The general rule with regard to the respective powers of the national and the state governments under the Constitution, is not in doubt. The states were before the Constitution; and, consequently, their legislative powers antedated the Constitution. Those who framed and those who adopted that instrument meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government; and in order that there should be no uncertainty in respect of what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not embraced by the enumeration remained vested in the states without change or impairment. * * *."

and upon the question of the supremacy of the state government within their spheres, further said:

> *"While the states are not sovereign in the true sense of that term,* but only quasi-sovereign, yet in respect of all powers reserved to them *they are supreme—'as independent of the general government as that government within its sphere is independent of the states'.* Collector v. Day (Buffington v. Day) 11 Wall. 113, 124, 20 L. Ed. 122, 125. And since every addition to the national legislative power to some extent detracts from or invades the power of the states, it is of vital moment that, in order to preserve the fixed balance intended by the Constitution, the powers of the

> general government be not so extended as to embrace any not within the express terms of the several grants or the implications necessarily to be drawn therefrom. It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U. S. 251, 275, 62 L. ed. 1101, 1107, 38 S. Ct. 529, 3 A. L. R. 649, Ann. Cas. 1918E, 724, possesses no *inherent* power in respect of the internal affairs of the states; and emphatically not with regard to legislation. * * *." (Italics ours).

In the case of UNITED STATES v. CALIFORNIA, 297 U. S. 175, text 183 and 184, 56 S. C. R. 421, 80 L. ed. 567, text 572, this Court held that the State of California, although when "operating its railroad it is acting within a power reserved to the states", was subject to the laws regulating interstate commerce in its operation of the railroad. This seems to be a holding that the state, when acting within one of its reserved powers, may overlap one of the powers granted to the United States and thereby become subject to regulatory laws of the United States.

It having been determined that the state may in the performance of one of its powers become subject to the rules and regulations of the federal government under another power granted to it under the United States Constitution, *is not the converse also true;* may not the United States in the performance of one of its granted powers become subject to the rules and regulations of one of the states under another power reserved to the state? The state in the exercise of its powers acts as an independent sovereign as does the federal government when exercising a power granted it.

Although the State of Florida owns none of the lands upon which the fertilizer and fertilizer materials furnished by the United States and its agencies are to be used, it has an interest independent of and behind the titles and interests of its citizens in all of the earth and air within its domain, as well as the welfare of its citizens. This seems to have been the substance of the holding of this court in the case of GEORGIA v. TENNESSEE COPPER COMPANY, 206 U. S. 230, text 237, 27 S. Ct. 618, 51 L. ed. 1038, text 1044, when it said:

> "The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The state owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a state for an injury to it in its capacity of quasi-sovereign. *In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.* It might have to pay individuals before it could utter that word but with it remains the final power. * * *."
> (Italics ours).

and in the case of HUDSON WATER CO. v. McCARTER, 209 U. S. 349, text 355, 28, S.C.R. 529, 14 Ann. Cas. 560, 52 L. ed. 828, when it said:

> "* * * it is recognized that the State has quasi-sovereign and representative of the interests of

> the public has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned. Kansas v. Colorado, 185 U. S. 125, 141, 142; S. C., 206 U. S. 46, 99; Georgia v. Tennessee Copper Co., 206 U. S. 230, 238. * * *."

Courts, in drawing the lines of demarcation which defines the limits of the powers and immunities between the state and federal governments, should strive to preserve to each government the freedom to carry out the duties and affairs committed to each under the Constitution of the United States without undue interference from each other. Under this rule the United States should not be permitted to unduly interfere with the states in the enforcement of the police powers reserved to them under the Constitution. In this connection see EDUCATIONAL FILMS CORPORATION v. WARD, 282 U. S. 379, text 391 and 392, 51 S.C.R. 170, 75 L. ed. 400, text 406 and 407, where this court said:

> "This court in drawing the line which defines the limits of the powers and immunities of state and national governments, is not intent upon a mechanical application of the rule that government instrumentalities are immune from taxation, regardless of the consequences to the operations of government. The necessity for marking those boundaries grows out of our constitutional system, under which both the federal and the state governments exercise their authority over one people within the territorial limits of the same state. *The purpose is the preservation to each government, within its own sphere, of the freedom to carry on those affairs committed to it by the Con-*

> *stitution, without undue interference by the order.* M'Culloch v. Maryland, 4 Wheat. p. 405, 4 L. ed. 501; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 125, 20 L. ed. 122, 126; Union P. R. Co. v. Peniston, 18 Wall. 5, 31, 21 L. ed. 787, 791; South Carolina v. United States, 199 U. S. 437, 461, 50 L. ed. 261, 269, 26 S. Ct. 110, 4 Ann. Cas. 737; Flint v. Stone."

In the instant case the federal government does not own or have exclusive jurisdiction over the lands within the State of Florida whereon the fertilizer and fertilizer materials furnished by the federal government to farmers in this state are to be used. There has been no cession of territorial jurisdiction over the farms by the state. This being true it seems that the state laws remain in full force and effect and that the state has full police power over said land and said farmers, and as an incident to the police jurisdiction has the authority to determine what fertilizer, plants, seeds and the like will be used thereon. Under that police power the state might enter such farms and regulate, even to the point of seizure and destruction, anything that may be to the best interest of the state as a whole. These powers have not been ceded by the state to the federal government and none of them were granted the United States under the United States Constitution. Nothing in the federal laws brought in question seem to supplant the state's police power as aforesaid or to supersede it.

Reasonable conclusions to be drawn from the above and foregoing authorities is that, where the United States or any of its agencies, as a part of the Soil Conservation and Domestic Allotment program, purchases fertilizers or fertilizer materials, in other states or countries, and brings the same into the State of Florida for the purpose of furnishing the same to agricultural producers for use upon

lands in the State of Florida not owned by or under the exclusive jurisdiction of the said United States or its agency, the State of Florida may:

1. As one of its police powers and for the protection of its people, cause such fertilizers and fertilizer materials to be inspected and analyzed for the purpose of ascertaining and determining whether the same meets the specifications and required analysis specified by the Florida Commercial Fertilizer Law of fertilizers and fertilizer materials to be used on, in, or mixed with, lands within said state;

2. Require, also, under its police powers for the protection of its people, the registration of the brand, guaranteed analysis and formula of fertilizers and fertilizer materials, as is required by the Florida Commercial Fertilizer Law as a condition precedent to its sale or delivery for use on, in, or mixed with, lands within said state; and,

3. Require the payment of an inspection fee, in connection therewith for the purpose of defraying the expenses of inspection, analysis, and law enforcement. This is not a tax but a fee to cover the expenses of enforcement of the inspection law.

Nothing said herein conflicts with what was stated in FEDERAL LAND BANK OF ST. PAUL v. BISMARCK LUMBER CO., 314 U. S. 95, 86 L. ed. 65, nor any of the other cases predicated upon the Birsmarck Lumber case. In the Bismarck case the federal Act establishing Federal Land Banks contained an express statutory exemption of such banks from state taxation and it was merely held that:

> "Congress may constitutionally immunize from state taxation activities in furtherance of the lend-

ing functions of land banks, since such functions are governmental rather than proprietary."

Thus the rationale of the Bismarck case is that, even in those instances where the exercise of federal power is governmental in character rather than proprietary, there should still be an affirmative congressional exemption from state taxation. At least this is the implication from the Bismarck case.

Third Specification:

IN THE CARRYING OUT OF THE SOIL BUILDING AND CONSERVATION PROGRAM DISCLOSED BY THE RECORD IN THIS CAUSE, AND MENTIONED IN THE FIRST SPECIFICATION, THE AGRICULTURAL ADJUSTMENT ADMINISTRATION IS ACTING MERELY AS A SERVICE AGENT OR CONDUIT FOR THE FERTILIZER MANUFACTURER AND/OR THE FLORIDA FARMER, AND, VIEWED IN SUCH LIGHT, THERE IS NO UNREASONABLE BURDEN CAST UPON THE FEDERAL GOVERNMENT OR ITS AGENCY, THE AGRICULTURAL ADJUSTMENT ADMINISTRATION, BY COMPLIANCE WITH THE STATE REGULATORY LAW GOVERNING THE IMPORTATION OF FERTILIZER INTO FLORIDA FOR USE UPON FLORIDA SOIL.

The record discloses that the appellee here, plaintiff in the court below, filed a motion for summary judgment, which motion, without consent of appellants here, was granted by the lower court (R 109, 116). The making and granting of such motion, and the entry of final decree granting permanent injunction thereon, automatically operated as an admission of the facts set up in the factual

defenses by the appellants in the court below. Among such facts set up as a defense are the following: that the uniform enforcement of the Florida Commercial Fertilizer Law protects all the Florida farmers alike who use commercial fertilizers, in that the farmers are insured of receiving fertilizers of an approved and guaranteed analysis of quality; that the Agricultural Adjustment Administration is obstructing and hindering proper enforcement of said State Act as to such fertilizer going through the administration and as to such Florida farmers receiving the same; that regardless of the form of the transaction whereby the fertilizer is acquired by the federal agency and delivered to the Florida farmer, such transaction is in effect and in substance a sale or transfer of the fertilizer from the fertilizer manufacturer to the Florida farmer, the federal agency merely acting as an agent or conduit through which the fertilizer passes from the manufacturer to the farmer; that all fees, costs and other expenses incurred in connection with the procuring and transferring of the fertilizer to the Florida farmer is paid by the farmer himself, and that if the manufacturer were allowed to pay the tax he would be reimbursed by the Florida farmer, either directly or through the Agricultural Adjustment Administration; that in carrying out the so-called soil building program the Agricultural Adjustment Administration is refusing to allow Florida fertilizer manufacturers to furnish fertilizer to Florida farmers but requiring Florida farmers to receive only such fertilizer as had been manufactured in other states and thence shipped into the State of Florida, the theory being that, as such fertilizer came into Florida from another state, a right of immunity could be claimed from complying with the Florida Inspection Law; that Florida manufacturers were amply able to furnish abundant fertilizer of proper quality to Florida farmers but were prevented from so doing by the policy

of the Agricultural Adjustment Administration, even though such policy required the Florida farmers to pay materially more for the fertilizer received by them from foreign states.

From the foregoing it is submitted that the mere fact that the federal agency contrives to procure fertilizer for Florida farmers from foreign manufacturers rather than to allow the Florida manufacturer to deliver it to the farmers of his own state, cannot be the difference between compliance and noncompliance with the State law. In its essence the transaction is one and the same. If the fertilizer came from Florida manufacturers the Inspection Law would attach and the inspection fee be due and payable when it was offered for sale by the Florida manufacturer, and under the case of ALABAMA v. KING & BOOZER, supra, there would seem to be no question of the validity of the levy even though the federal agency had to reimburse the Florida manufacturer out of the national treasury could not even pass it on to the Florida farmer.

What is the difference between the two situations in substance? Is there some magic in state lines that would produce such an unwarranted discrimination? The answer to the question is that in both instances the Agricultural Adjustment Administration is merely acting as a conduit or service medium in effecting the transfer of fertilizer from the manufacturer to the farmer. The federal government pays out no monies because of the State Inspection Fee. In both instances the manufacturer would pay the fee, as is required under the state law, and would then pass it on to the farmer, as is and has been the practice in all other cases. The argument that the federal government buys the fertilizer from the manufacturer in Georgia and thereby takes over an exclusive ownership thereof, and

retains such ownership until the fertilizer is delivered to the farmer in Florida, and becomes commingled with the soil, and therefore, at the time the product is introduced into the State of Florida it is the property exclusively of the federal government, is at once hyper-technical and does violence to the substance of the transaction. It is based upon an artificial factual situation.

In STANDARD OIL COMPANY OF LOUISIANA v. FORTENOT, 198 La. 644, 4 So. (2d) 634, the Supreme Court of Louisiana had somewhat the same situation before it, and in that case the Court peered through the artificial veil with which the transaction was covered and examined the substance of the entire transaction. The result arrived at by the Court, with reference to immunity from state taxation, when the substance of the transaction was considered, was quite different than if the mere outward appearance of the transaction had been alone considered.

In the instant case, if the federal agency be considered not as a bona fide owner of the fertilizer when it comes into the State of Florida, but merely as a service agent in effecting the transfer, or aiding in the transfer, of the fertilizer to the Florida farmer, it could not be seriously contended that the fertilizer was not subject to inspection under the state law nor the manufacturer thereof to the payment of the inspection fee.

It is respectfully submitted that the decree appealed from shall be reversed.

Respectfully submitted,

J. TOM WATSON,
Attorney General of the State of Florida, Tallahassee, Florida.

JAS. H. MILLICAN, JR.,
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FRED M. BURNS,
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Brief adopted by the undersigned as Amici Curiae:

WILLIAM N. MCQUEEN, as *Acting Attorney General* in behalf of the State of Alabama;

EUGENE STANLEY, as *Attorney General* in behalf of the State of Louisiana;

HARRY MCMULLAN, as *Attorney General* in behalf of the State of North Carolina;

THOMAS J. HERBERT, as *Attorney General* in behalf of the State of Ohio.

APPENDIX A

In the District Court of the United States for the Northern District of Florida

CIVIL ACTION GCA-31

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NATHAN MAYO, et al.,
Defendant.

ORDER ON MOTIONS AND FINAL DECREE

This cause came on to be heard and was argued by counsel and on consideration thereof, the Court having filed its Findings of Fact and Conclusions of Law, it is

ORDERED, ADJUDGED and DECREED as follows:

1. The motion of defendants to dismiss the complaint is denied.
2. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction is granted; and defendants' motion to add parties is accordingly denied.
3. The application of plaintiff for a preliminary injunction is granted.
4. The motion of plaintiff for summary judgment enjoining the defendants as prayed in the complaint and for a final permanent injunction in the terms of the temporary restraining order heretofore issued is granted.

And it is FURTHER ORDERED, ADJUDGED and DECREED as follows:

5. The defendants above named and each of them, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them are hereby permanently enjoined from: Taking any steps to enforce "stop sale notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribution of fertilizer and from threatening to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, of obstructing in any way the program of the United States with respect to the distribution of fertilizer.

6. The defendants are hereby required to vacate and set aside the "stop sale notices" and seizures which are the subject matter of this action.

7. The Court reserves jurisdiction of this cause and of the parties for the purpose of enforcement of this decree and for the granting of such further relief as may be appropriate.

Dated October 26, 1942.

LEON MCCORD,
United States Circuit Judge.

AUGUSTINE V. LONG,
United States District Judge.

Dissenting: CURTIS L. WALLER,
United States District Judge.

APPENDIX B

In the District Court of the United States for the Northern District of Florida

CIVIL ACTION GCA-31

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NATHAN MAYO, et al,
Defendant.

Dissenting Opinion by District Judge Waller

The Florida Fertilizer Inspection Statute is a valid exercise of the police power of the State to protect the farmers against the sale of inferior or fraudulent fertilizer.

The Federal Government has enacted no statute for the protection of the purchasers of fertilizer in Florida. Under the Constitution all power not granted to the Federal Government was reserved to the States. Moreover, the power of the State to levy a reasonable inspection fee is expressly provided in Section 10 of Article I:

> "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, *except what may be absolutely necessary for executing its inspection Laws:* * * *" (Italics supplied.)

The right of the State to levy an inspection tax is not merely implied but expressly conferred by the Constitution.

The Congress could not take the power away from the State to levy a reasonable inspection tax. If Congress cannot do so, it follows that the Department of Agriculture cannot do so.

The State is supreme and sovereign in the exercise of its reserved powers. The right to levy an inspection tax is expressly reserved in the State. Therefore, the State is supreme in the exercise of this power.

Congress is supreme in the powers delegated to it, but the right to regulate the inspection of fertilizer or to regulate agriculture was not expressly delegated to the Congress. Whatever power Congress has to regulate agriculture is under the general welfare clause of the Constitution, but the promotion of the general welfare does not call for the striking down of a constitutional power of a State. It is more important that the relations between the State and Federal Governments under our dual system be preserved and left uninfringed than refraining from deducting from a gift to the farmer a reasonable inspection fee levied by the State under the power of the Federal Constitution.

I agree with the majority Court that the State was probably without power to seize property of the United States, to wit, the fertilizer in question, but I consider the seizure as purely procedural. The substantive question is whether or not the Department of Agriculture has the right to procure fertilizer for farmers and thereby permit them to escape the payment of an inspection tax, whereas the vast majority of farmers who are not the recipients of this gratuity will have to pay an inspection tax. It is idle to say that this inspection fee is a burden upon the Federal Government for the reason that since it is a gratuity the Government can, without loss to itself, deduct the amount of the inspection tax from the amount of the benefit to be paid to the farmer, of which the fertilizer distribution is but an advancement.

I do not consider that the inspection fee is a tax, but if it be a tax it is a non-discriminatory tax and compels no burden to be cast upon the Federal Government.

If it be a tax there is no implication that Congress intended to grant immunity from the payment of the tax. There is no immunity from taxation granted in the Federal Constitution. Immunity proceeds only from the express language of a statute or implications therein. An implied immunity can only be ascertained from the intention of Congress, and the nature and effect of the burden placed upon the Government. See GRAVES v. NEW YORK, EX REL O'KEEFE, 306 U. S. 468; STATE OF ALABAMA v. KING & BOOZER, 314 U. S. 1; CURRY v. UNITED STATES, 314 U. S. 14.

In the case of GRAVES v. NEW YORK, EX REL O'KEEFE, supra, the Court, referring to the decision in the case of HELVERING v. GERHARDT, 304 U. S. 405, said:

> "* * * it was there pointed out that the implied immunity of one government and its agencies from taxation by the other *should*, as a principle of constitutional construction, *be narrowly restricted*. For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, * * *" (Italics supplied.)

It seems to me that in view of the power of the State expressly conferred by the Federal Constitution to levy an inspection tax, it could not be implied, in the absence of express language in the statute, that Congress intended to exempt the fertilizer in question from the provisions of the valid inspection statute of the State of Florida.

Entertaining the above views I am forced to dissent from the findings of fact and conclusions of law of the majority of the Court.

October 28, 1942.

/s/ CURTIS L. WALLER,
United States District Judge.

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON, APPELLANTS

v.

UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The findings of fact, conclusions of law, and opinions of the District Court (R. 109–122) are reported in 47 F. Supp. 552.

JURISDICTION

The judgment of the District Court was entered on October 26, 1942 (R. 116–117). The appeal was taken on January 13, 1943, (R. 125–127) and was allowed on the same date (R. 131–132). This Court noted probable jurisdiction on March 1, 1943 (R. 139). The jurisdiction of this Court rests on Sections 238 and 266 of the Judicial Code as amended.

QUESTIONS PRESENTED

1. Whether the labelling, tagging, and fee requirements of the Florida Commercial Fertilizer Law may be applied to fertilizer which the United States Government owns and distributes in Florida pursuant to the Soil Conservation and Domestic Allotment Act.

2. Whether appellants, State officials acting pursuant to the purported authority of the Florida Commercial Fertilizer Law, may seize such federally-owned fertilizer for failure to pay the inspection fees and to attach the tags required by that law.

STATUTES INVOLVED

The pertinent portions of the Constitution and statutes involved are set forth in the Appendix, *infra,* pp. 38–51.

STATEMENT

On September 19, 1942, the United States filed a verified complaint in the court below seeking to enjoin appellant Mayo (the Commissioner of Agriculture of the State of Florida), appellant Hutchinson (an Inspector in the Inspection Bureau of the Florida Department of Agriculture) and others from interfering with the United States and its agencies in the distribution in the State of Florida of fertilizer owned by the United States (R. 1–8). The allegations of the complaint

and the averments of an attached affidavit of Joseph L. Orr, Acting Director, Division of Special Programs, Agricultural Adjustment Agency (R. 9–46), may be summarized as follows:

The purposes of the Soil Conservation and Domestic Allotment Act (herein sometimes called the Federal Act) are to improve and preserve soil fertility, to promote economic use and conservation of land, to diminish exploitation and wasteful and unscientific use of national soil resources, to protect rivers and harbors against the results of soil erosion, and to reestablish the ratio between farm and nonfarm purchasing power (Sec. 7 (a), 16 U. S. C., sec. 590g (a)). The Act requires the Secretary of Agriculture to "encourage and provide for soil-conserving and soil-rebuilding practices" and provides for payments or grants in aid for carrying out the practices which the Secretary finds will tend to effectuate the policy of the Act (Secs. 7 (b), 8 (b), 16 U. S. C., secs. 590g (b), 590h (a)). Farmers who wish to participate in the program under the Act communicate with local agricultural associations, which are instrumentalities and agencies of the United States; the local associations instruct the farmers concerning the practices to be followed in order to receive the benefit payments (R. 10).

One of the practices involves the application of superphosphate fertilizer to the soil in connection with the planting of certain soil-conserving crops

such as legumes and grasses, which are peculiarly able to use superphosphate and to obtain nitrogen from the air and soil. The nitrogen so obtained by these crops is made available for future use by plowing them under and thereafter planting a commercial crop. This practice is essential and is designed to increase the nitrogen content of the soil, thereby compensating for the critical shortage of chemical nitrogen for fertilizer purposes because of its extensive use in munitions necessary for the war. (R. 2–3, 9–11.) Since many farmers are financially unable to purchase the fertilizer, the Government often makes it available to them in advance, and, after their performance of the prescribed practices, the cost of the fertilizer is deducted from the total benefit payment due to them. There would not be a sufficient supply of superphosphate fertilizer to meet the present needs, in view of the shortage of nitrogen, if it were not for the centralized purchase on a large scale by the United States and the consequent stimulation of production. (R. 9–11.)

Pursuant to this national soil conservation program (R. 3), the United States acquired fertilizer and was distributing it in the State of Florida in order to facilitate the planting of winter legumes not later than about October 15, 1942. It was necessary for the program to proceed without delay since the planting season for such soil conserving crops in Florida extended to approxi-

mately that date[1] (R. 3, 13). Under the purported authority of the Florida Commercial Fertilizer Law[2] (Florida Statutes, 1941, c. 576; Appendix, *infra,* pp. 45–51) (herein sometimes called

[1] At the hearing before a three-judge court, there was a further showing of a continuing need for protecting the Government's program beyond October 15, 1942, and that the Government's problem was not merely seasonal but recurrent and perennial (R. 77–78), and the court below so found (R. 110, 114–115).

[2] The Florida Commercial Fertilizer Law is a comprehensive statute regulating the inspection of commercial fertilizer manufactured, sold, distributed, or imported into the State of Florida. It establishes a standard for commercial fertilizer and requires manufacturers and importers of commercial fertilizer to file with the State Commissioner of Agriculture statments setting forth their agents in the State, and the name and guaranteed analysis of the brand of fertilizer offered for sale (Sec. 576.03). Sale before registration of the brand is made unlawful (Sec. 576.04). Every manufacturer shipping in lots of one ton or more must notify the Commissioner of Agriculture, on the date of shipment, of the name and address of the consignee, the point of destination, the quantity, the brands, and the number and initial of the car (Sec. 576.05). Each package of fertilizer "manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State" is required to have a tag attached disclosing certain information as to the name of the manufacturer, and as to the contents which must meet certain requirements (Sec. 576.07). There must also be attached a stamp, label, or tag showing payment of the inspection fee (*ibid*) called for by Section 576.11. Every manufacturer, importer, or dealer must forward to the State Treasurer the money for his fee stamps together with his request for the stamps, and the Treasurer hands the request to the Commissioner of Agriculture who sends the stamps to the applicants (Secs. 576.12, 576.13). The sheriffs of the counties are authorized to seize and sell at public auction each package of fertilizer "imported into or sold" in the State

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the Florida law), however, defendants were interfering with and obstructing the United States in the exercise of its sovereign functions, by issuing and threatening to enforce "stop sale notices" prohibiting the distribution of the fertilizer, and by seizing and threatening to sell such fertilizer at public sale, on account of the failure of the United States to pay the inspection fee imposed by the Florida law and failure to obtain and attach tags to the containers of the fertilizer as required by that law (R. 3–4).[3]

Specific instances were cited in which the United States owned and was entitled to the im-

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which does not have the stamps attached (Sec. 576.15). A procedure is established for analysis of the fertilizer by the State Chemist on application of any purchaser (Sec. 576.19). Finally, it is made a misdeameanor for any person to manufacture, import, transport, distribute, store, keep, or offer for sale or sell any fertilizer without an attached tag disclosing the information required and the stamps showing payment of the fee (Secs. 576.26, 576.27).

[3] Such threats were alleged to have been embodied in a telegram sent on September 16, 1942, by appellant Mayo to the Secretary of Agriculture, stating that in his opinion the A. A. A. officials were ignoring Florida fertilizer inspection laws and that he was having all shipments of superphosphate, which did not show evidence of payment of inspection fees, seized and sold to the highest bidder, and that he was cancelling the right to do business of any concern "party to this high handed procedure" (R. 5). This telegram received wide publicity in an Associated Press Dispatch in the Florida papers on September 17, 1942, which stated further that Mayo "ordered seizure of Federal AAA fertilizer shipments into this State on which inspection fees have not been paid" (R. 4–5).

mediate and undisturbed possession of certain lots of superphosphate fertilizer purchased through the Department of Agriculture from various fertilizer producing companies in Georgia (R. 5–7, 28–43).[4] Such Government-owned fertilizer was shipped by direction of the Government from various points in Georgia under Government bills of lading consigned to Agricultural Associations in Florida, federal instrumentalities and agencies acting on behalf of the United States (R. 6, 7, 46A). Thereafter, appellants Mayo and Hutchinson issued "stop sale notices" to the administrative officers of the Agricultural Associations, directing them to withdraw the fertilizer from "sale" and to hold it "subject to further instructions" on the ground that the fertilizer was not registered and tagged as required by the Florida law (R. 5, 7, 12–13).

The complaint alleged that the property and transactions of the United States are immune from state interference, that the Florida Commercial Fertilizer Law did not apply to the property or transactions of the United States but, if

[4] The superphosphate fertilizer was purchased with funds appropriated by Congress in the Department of Agriculture Appropriation Act for the Fiscal Year ending June 30, 1943 (Public Law No. 674, 77th Cong. 2d Sess., p. 32), which provided that the amounts appropriated "shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials, or any soil terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary of Agriculture" (R. 11).

construed so to apply, violated Article VI, Clause 2, of the Constitution of the United States, and that all actions of appellants pursuant thereto, directed against the Government, were void (R. 3–4). After asserting the necessity for immediate execution of the federal program and the imminent and irreparable injury to the United States from interference therewith (R. 7–8; see R. 13), the complaint prayed for a preliminary and permanent injunction against the seizures and threatened sales and to prevent any obstruction of the federal program under the Florida Commercial Fertilizer Law or otherwise (R. 8).

Upon the basis of the showing of imminent and irreparable injury made in the complaint and attached affidavit, District Judge Long issued a temporary restraining order on September 19, 1942, enjoining any interference with the distribution by the United States of federally-owned fertilizer, and ordered all defendants to show cause why the preliminary injunction prayed for in the complaint should not be granted (R. 47–48).[5] On September 28, 1942, the District Judge convened a three-judge court to hear the case, since it appeared from the complaint "that the relief sought provides for suspending or restraining the enforcement, operation, or execution" of a state

[5] The restraint embodied in the order of September 19, 1942, was duly extended by successive orders and by consent remained in effect pending hearing and determination of plaintiff's application for a temporary injunction (R. 53).

statute, the Florida Commercial Fertilizer Law (R. 50–51).

Defendants' answer (R. 53–68), filed October 23, 1942, admitted that the fertilizer involved was being distributed in Florida, "evidently by the United States or some of its agencies" (R. 57), admitted the issuance of the "stop sale notices" and the seizures of the fertilizer (R. 59), and admitted the threat to seize and sell fertilizer not complying with the Florida law (R. 60). Defendants, however, denied the legal consequences of these admitted facts (R. 58, 59, 60).[6]

In an affirmative defense, defendants alleged that the United States was merely a conduit for the delivery of fertilizer by manufacturers out of the state and that, by purchasing fertilizer out of state for shipment into the state, the Government was attempting deliberately to circumvent the Florida law (R. 61–64). The defendants also filed a counterclaim (R. 64–68), reaverring the allegations of the affirmative defense (R. 64), and alleging that the Government and the companies that sold the fertilizer to the Government were liable for payment of inspection fees under the Florida law, and requesting declaratory relief to that effect against all the companies and the Gov-

[6] In addition, the answer alleged that the complaint failed to state a cause of action (R. 53, 55–56), that the court lacked jurisdiction of the subject matter (R. 54–55), and that the Federal Act was unconstitutional (R. 55).

ernment (R. 67–68). On October 26, 1942, defendants moved to bring in the fertilizer companies as additional parties (R. 69).

The United States replied to the counterclaim, denying the affirmative allegations and asserting that the court was without jurisdiction to entertain a suit against the United States without its consent, that the joinder of other parties would be fatal to the jurisdiction of the court, and that the court had no jurisdiction over the controversy between the fertilizer companies and the defendants (R. 72–75).[7]

On October 26, 1942, a hearing was held before the three-judge court, and additional affidavits (R. 75–109) were filed by the Government and the defendants. At the hearing, defendants moved to dismiss the complaint, and the Government moved to dismiss the counterclaim and for summary judgment (R. 137).[8]

After the hearing, the court below (one judge dissenting) made findings of fact (R. 110–115), substantially as set forth in the complaint, in-

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[7] The reply (R. 72–75) was verified in Washington, D. C., on October 23, 1942, two days prior to the filing of the answer, an advance draft of the answer having been served pursuant to Judge Long's order of October 17, 1942 (R. 53). The draft answer was attached to the verification of the reply (R. 75) but is omitted from the printed record (R. 138). It is not disputed that the draft answer is substantially the same as the answer actually filed.

[8] Defendants waived the ten days' notice requirement of Rule 56 (c) of the Federal Rules of Civil Procedure before entry of summary judgment (R. 109–110, 116).

corporating the Government's affidavits, and filed conclusions of law (R. 115–116) holding that "property and transactions of the United States and its agencies referred to in the Findings of Fact are under the Constitution of the United States immune from and not subject to the application of the Federal Commercial Fertilizer Law relied on by defendants" (R. 115) and that the distribution of the fertilizer is "immune from the fertilizer inspection, analysis, control and fee requirements" of the Florida law (R. 116). The court, concluding that there was no genuine issue as to any material fact and that the Government was entitled to judgment as a matter of law (R. 115), issued a final decree (R. 116–117)[9] permanently enjoining defendants from—

> Taking any steps to enforce "stop sales notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribtuion of fertilizer and from threaten-

[9] The order entered on motions and the final decree (R. 116–117) also denied defendants' motion to dismiss the complaint, granted the Government's motion to dismiss the counterclaim, denied defendants' motion to add parties, and granted the Government's motion for summary judgment and for a permanent injunction (R. 116).

> ing to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, or obstructing in any way the program of the United States with respect to the distribtuion of fertilizer.

Defendants were further required to vacate and set aside the "stop sale notices" and seizures involved in this action, and the court reserved jurisdiction of the cause and of the parties for the purpose of enforcement of the decree and for the granting of such further relief as might be appropriate (R. 117).

SUMMARY OF ARGUMENT

I

A. We do not contend that the Florida Commercial Fertilizer Law in its general application is not a valid exercise of the state's police power. Our contention, rather, is that it cannot be applied to the United States because the power of the Federal Government to dispose of its own property pursuant to Congressional direction is constitutionally beyond the reach of state regulation. The supremacy of the national government established by Article VI, Clause 2 of the Constitution prevents any state interference, by taxation or otherwise, with any federal function, and this Court has consistently so held. *Ohio* v. *Thomas,* 173 U. S. 276; *Johnson* v. *Maryland,* 254 U. S. 51.

This case does not involve an attempt by the state to effectuate a state purpose by means of a regulatory statute directed to persons within its control, with only the incidental consequence of an economic burden or other effect upon the United States. The restriction, here, is directly upon the Government itself. No case lends support to such asserted state authority.

B. In any event, under familiar and long established principles, appellants are without authority to seize the property of the United States. *The Siren,* 7 Wall. 152; *United States* v. *Alabama,* 313 U. S. 274.

ARGUMENT

Under appellants' present "specification of errors intended to be urged" (Br. 13–14), the sole issue remaining in this case is whether the United States, in the performance of its functions under the Soil Conservation and Domestic Allotment Act, is constitutionally immune from the operation of the Florida Commercial Fertilizer Law. On appeal to this Court, appellants assigned as error (R. 127–131) the action of the court below in overruling each of the defenses set up in the answer and special defense and in denying the relief sought in the counterclaim. However, in their brief (Br. 13–14), appellants have abandoned their points as to the dismissal of the counterclaim and the denial of the motion to add parties (Assignment of Errors 3; R. 127), the

jurisdiction of the court below (Assignments 9, 10, 11; R. 128–129),[10] and the failure of the com-

[10] While these assignments have been abandoned and are not argued in appellants' brief, we advert briefly to those which are jurisdictional in nature: (a) The court below, as constituted, clearly had jurisdiction to issue the preliminary and final injunction. The United States was party plaintiff (see Section 24 (1) of the Judicial Code, 28 U. S. C. § 41 (1)), and the complaint sought to enjoin state officials from enforcing or executing the Florida law on the ground that, as applied, it violated the Federal Constitution. See Sections 266 and 264 of the Judicial Code, 28 U. S. C. §§ 380, 378; *Gibbs* v. *Buck*, 307 U. S. 66; *Hale* v. *Bimco Trading Co.*, 306 U. S. 375. This was not a suit against the State (*Sterling* v. *Constantin*, 287 U. S. 378, 393; *Cavanaugh* v. *Looney*, 248 U. S. 453, 456; *Ex parte Young*, 209 U. S. 123); nor was it a suit challenging an order of a state administrative agency affecting utility rates nor a suit to enjoin collection of a state tax. Cf. Section 24 (1) of the Judicial Code, 28 U. S. C. § 41 (1). It was a suit to restrain interference with a federal function by means of a state regulatory system.

(b) The counterclaim was properly dismissed and the motion to add parties was properly denied. In a suit brought by the United States, counterclaims under the Tucker Act are beyond the court's jurisdiction (*United States* v. *Nipissing Mines Co.*, 206 Fed. 431, 434 (C. C. A. 2); cf. *United States* v. *Shaw*, 309 U. S. 495), and the Federal Rules do not enlarge the right to assert counterclaims against the United States (Rule 13 (d)). Even if a cause of action under the Tucker Act could be asserted in a counterclaim, the counterclaim here involved was improper because it sought declaratory relief. The Tucker Act extends to claims for money only and does not include other forms of relief. *United States* v. *Sherwood*, 312 U. S. 584. Moreover, the attempted joinder of additional parties would be fatal to the court's jurisdiction under the Tucker Act. *United States* v. *Sherwood*, *supra*; *Lynn* v. *United States*, 110 F. (2d) 586 (C. C. A. 5).

plaint to state a cause of action (Assignment 12, R. 129).

In the court below, appellants also urged that the Federal Act is unconstitutional; they took a like position in their assignments of error on appeal (Assignments 13, 14; R. 129–130). No such specification of error is now urged (Br. 13–14), and appellants do not advert to the issue in their brief in this Court. In these circumstances, we do not think it profitable to argue the issue of the Federal Act's constitutionality. Indeed, in any event, there can be no serious question of its validity. Cf. *Steward Machine Co.* v. *Davis,* 301 U. S. 548; *Helvering* v. *Davis,* 301 U. S. 619. And whatever may be the current force of *United States* v. *Butler,* 297 U. S. 1, it is plain that the instant Act suffers from none of the defects thought to be fatal in the *Butler* case, since here no tax is levied to carry out the Act's purposes but the funds come from a general appropriation; its purpose is not to control or regulate production but to control national soil resources (see Sec. 7 (a), 16 U. S. C., sec. 590g (a)); and there are no coercive contracts, since reliance is had solely upon the farmers' voluntary cooperation (Secs. 7 (a), 8 (b), 16 U. S. C., secs. 590g (a), 590h (b)).[11]

[11] Were the issue of constitutionality raised here, we would urge that the *Butler* case should in any event be reconsidered on the reasoning of the dissenting opinion of Mr. Justice Stone, 297 U. S. at 78–88.

Assuming, therefore, that the Soil Conservation and Domestic Allotment Act is a constitutional exercise of the powers under the general welfare clause, the decisive question lies within narrow compass. It is whether the State of Florida may, by seizure or otherwise, interfere with or prevent the distribution by the United States of its own property in the State of Florida pursuant to specific authority granted by Congress. A majority of the court below held that "the distribution of the fertilizer and fertilizer materials by the United States and its agencies * * * is, under the Constitution of the United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida Commercial Fertilizer Law" (R. 115–116) and enjoined appellants from "interfering, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer" (R. 117). This decision, we submit, was proper, and in accord with the uniform and controlling decisions of this Court.

THE FLORIDA COMMERCIAL FERTILIZER LAW CANNOT CONSTITUTIONALLY APPLY TO THE FEDERAL PROPERTY AND TRANSACTIONS HERE INVOLVED, AND IN ANY EVENT THE SEIZURES OF THE FEDERAL PROPERTY WERE INVALID

A. The court below found (R. 110–115), and the record shows beyond genuine issue, that the United States was engaged in the distribution of fertilizer, owned by it, in the State of Florida pur-

suant to a federal soil conservation program designed to preserve and improve the fertility of and to accomplish other purposes enumerated in Section 7 of the Federal Act (16 U. S. C., sec. 590g). It found (R. 110–111) that the United States was distributing superphosphate fertilizer in Florida in order to facilitate the planting of certain legumes (during the then current and future crop years), and that these legumes were designed to increase the nitrogen content of the soil. Such increase was to compensate for the critical shortage for fertilizer purposes of chemical nitrogen due to its extended use for munitions in the war, and was to leave available for war purposes nitrogen which would otherwise have to be diverted unless a decrease in agricultural production were to result. The need for maximum food production was imperative at the time of the institution of this case and continues today (R. 11, 77, 110, 111); similarly the need for the planting of soil-enriching legumes is persistent, continuing, and perennial (R. 77–78, 110, 114–115). The function of the United States in furnishing food to our Allies under the Lend-Lease Act, the increased demands of our own armed forces, and the general shortage of farm labor have made it critically important that each acre of land which is devoted to raising food produce the maximum amount possible, and the fertilizing practices which the Government was here encouraging tend-

ed to achieve such maximum production and to prevent wasteful use of the soil (R. 11, 77, 110, 111).

The United States was the owner of all the fertilizer involved, having purchased it from various producers (R. 28–43, 113, 114), and had shipped it into the State of Florida as its own property in order to distribute it to farmers in the State (R. 111–114). The purchase and distribution of the fertilizer was authorized by the Soil Conservation and Domestic Allotment Act and by the Department of Agriculture Appropriation Act for the Fiscal Year ending June 30, 1943, appropriating $450,000,000 to be available, among other things, for the purchase of fertilizers.

It is undisputed that appellants, pursuant to the purported authority of the Florida Commercial Fertilizer Law, issued "stop sale notices" directing that the fertilizer be withdrawn from sale and be "held subject to further instructions," and that appellant Mayo ordered all shipments which did not show evidence of payment of inspection fees "seized by sheriff and sold to highest bidder" (R. 3–4, 5–7, 12–13, 112, 113, 114).

The execution of the program specifically provided for and authorized by Congressional acts cannot, we submit, be made subject to state stat-

utory schemes of regulation in the manner sought by appellants.[12]

We do not contend that the Florida law in its general application is an invalid exercise of the State's police power. A state may, under its police power, enact regulatory statutes providing for the labeling and inspection of a commodity such as fertilizer and the payment of inspection fees. Cf. *Patapsco Guano Company* v. *North Carolina Board of Agriculture,* 171 U. S. 345; see also United States Constitution, Art. I, Sec. 10. Our contention, however, is that a state cannot interfere with the power of the Federal Government to dispose of its own property pursuant to Congressional direction.

The supremacy clause of the Constitution[13] removes all state obstacles to the performance by

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[12] The complaint alleged (R. 3–4) and the court below concluded (R. 111–112) that the Florida law was not intended to apply to the United States. The opinion below placed primary reliance on the unconstitutionality of the Florida law as applied rather than on its construction, but stated that "the conclusion could be reached that by this statute of Florida the legislature had no intention of affecting the property of the Federal Government." (R. 121.) Cf. *Nardone* v. *United States*, 302 U. S. 379, 383; *United States* v. *Fox*, 94 U. S. 315; *Stanley* v. *Schwalby*, 147 U. S. 508, 514–517; Sutherland, *Statutory Construction* (2d ed. 1904), secs. 514, 694; Endlich, *Interpretation of Statutes* (1888), secs. 161, 167.

[13] It is interesting to note that if this case had arisen prior to the adoption of the Constitution, Article IV of the Articles of Confederation which provided that "no imposition, duties

the Federal Government of any of its functions and so modified "every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch* v. *Maryland,* 4 Wheat. 316, 427. This doctrine of federal immunity, accepted in many decisions of this Court,[14] is coextensive with the scope of federal power, for every authorized activity of the United States is an exercise of its governmental power. *Graves* v. *N. Y. ex rel O'Keefe,* 306 U. S. 466, 477; *Pittman* v. *Home Owners' Corp.,* 308 U. S. 21, 32;

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or restriction shall be laid by any State, on the property of the United States, or either of them," would have been dispositive of the case in favor of the Government. See also Article IV of the Ordinance of 1787. Certainly, it cannot be contended that the Constitution, which was designed to remedy the defects of the Confederation by creating a stronger central government, granted the Government a lesser immunity. See Farrand, *The Framing of The Constitution* (1913), pp. 128, 153–154; Burnett, The Continental Congress (1941), p. 398; Story on the Constitution (5th ed. 1891), secs. 229–280; Warren, *The Making of the Constitution* (1937), pp. 3–54; The Federalist, No. XL. The express provision of Article IV of the Articles of Confederation, necessary in a system of sovereign confederated states, was obviously superfluous in a federal system creating a strong national government, especially in view of the supremacy clause. See The Federalist, Nos. XXXIII, XLIV; see also *McCulloch* v. *Maryland*, 4 Wheat. 316.

[14] See e. g. *Osborn* v. *United States Bank*, 9 Wheat. 738; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 590–591; *Tennessee* v. *Davis*, 100 U. S. 257, 263; *In re Neagle*, 135 U. S. 1; *Ohio* v. *Thomas*, 173 U. S. 276, 283; *Johnson* v. *Maryland*, 254 U. S. 51, 55–56; *Arizona* v. *California*, 283 U. S. 423; see also *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, No. 399, this Term, decided March 1, 1943.

Federal Land Bank v. *Bismarck Lumber Co.*, 314 U. S. 95, 102.

A corollary of the principle of federal immunity is the disqualification of the states, either under their police power or under their taxing power, to interfere with the property, operations, or functions of the United States. Because the United States "may perform its functions without conforming to the police regulations of a State," it may construct a dam and reservoir in a state without securing approval of its plans and specifications by the state engineer as required by state statute (*Arizona* v. *California,* 283 U. S. 423, 451); and it may operate soldiers' homes without complying with state inspection or police regulations (*Ohio* v. *Thomas,* 173 U. S. 276).[15] So, too, the driver of a mail truck for the Post Office Department cannot be required to comply with state driving license requirements (*Johnson* v. *Maryland,* 254 U. S. 51; cf. *Baltimore and Annapolis R. Co.* v. *Lichtenberg,* 176 Md. 383, appeal dismissed, 308 U. S. 525), nor may federal agents in a national

[15] "Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application." *Ohio* v. *Thomas*, 173 U. S. 276, 283.

forest and game preserve be subject to the hunting restrictions of the state in which the preserve is located (*Hunt* v. *United States,* 278 U. S. 96).[16]

These cases are controlling. They have not lost their vitality, but, indeed, were cited with approval by this Court in *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania,* No. 399, this Term, decided March 1, 1943. The Court there stated (slip sheet, p. 3):

> We may assume also that, in the absence of congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. *Ohio* v. *Thomas,* 173 U. S. 276; *Johnson* v. *Maryland,* 254 U. S. 51; *Hunt v. United States,* 278 U. S. 96; *Arizona* v. *California,* 283 U. S. 423. * * *

The *Penn Dairies* case suggests no modification of the principle of federal immunity from state interference. The state price-fixing law there involved was held to be merely an "exercise of control over the seller" from whom the Government

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[16] Numerous other examples may be cited of immunity of the national government from local regulation. The United States may enforce a lien for taxes upon real estate under the internal revenue laws without complying with state law requiring recordation and timely enforcement (*United States* v. *Snyder,* 149 U. S. 210); and a claim of the Government against a decedent's estate will not be barred by failure to file within the time required by state law. *United States* v. *Summerlin,* 310 U. S. 414.

purchased, with only an incidental economic burden passed on to the Government, and imposed "no prohibition on the national government or its officers." While the trend of the decisions was stated to be "not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents," there was no suggestion of an intention to destroy the immunity of the Government itself.[17] We are not here concerned with an attempt by the State of Florida to effectuate a state purpose by means of regulatory statutes directed to persons over whom the state has control, with the incidental consequence of an economic burden or other effect upon the United States. Cf. *Alabama* v. *King & Boozer*, 314 U. S. 1; *Penn Dairies, Inc.* v. *Milk Control Commission, supra.* Here, as we have noted (*supra*, p. 18), the fertilizer was owned by the United States, which held it for sale and distribution to farmers under the Federal Act. Florida officials sought to prohibit such distribution by the United States unless the United

[17] The "present climate of opinion" which looks with disfavor on immunity from suit for governmental corporations (*Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 391; *F. H. A.* v. *Burr*, 309 U. S. 242) does not deprive the Government itself of any of its sovereign immunities. See *United States* v. *Shaw*, 309 U. S. 495; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Sherwood*, 312 U. S. 584.

States obtained and attached tags to the fertilizer containers and paid an inspection fee to Florida (R. 3–4). There can be no question, and appellants do not contend to the contrary, that the United States was sought to be made the direct and immediate object of the Florida Act's impact. Thus the only issue here is whether a state may impose regulations and restrictions on "the national government itself and governmental functions performed by its officers and agents." We know of no case in this Court which lends support to such asserted authority of a state; rather, as we have seen, the decisions and statements of this Court are uniformly to the contrary.

Like uniformity appears in the tax cases in the field of federal immunity, so far as we are aware, this Court has never held that, in the absence of Congressional consent, the national government or its property may be taxed by a state or local government.[18] The decision in *Alabama* v. *King & Boozer,* 314 U. S. 1, does not cast doubt on this basic principle. The Court there held that an Alabama sales tax may validly be applied to a sale of materials by a dealer to a private contractor who had a cost-plus-a-fixed

[18] The cases are analyzed in the Brief for the United States in *Alabama* v. *King & Boozer*, No. 602, October Term, 1941, pp. 55–61.

fee contract with the Federal Government, because the legal incidence of the tax was on the contractor and not on the Government. The fundamental assumption of the decision was that a tax directly upon the United States or its property would have been constitutionally invalid, for the Court found it necessary to examine the Alabama statute in order to ascertain upon whom the tax was laid and whether the United States was in effect the taxpayer. There was no indication that the principle of immunity of the Government itself was questioned.

Appellants do not attempt to distinguish any of the cases upon which we rely, nor do they challenge their relevance here. Instead they apparently urge (Br. 20–25) that, since the decision of this Court in *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, the Government and its property have lost their constitutional immunity from the application of state laws. Appellants insist that under the present rule the Government has only such immunity as may be found in an Act of Congress, that there is no immunity so derived in this case, and that, moreover, the act appropriating the funds for the purchase of the fertilizer (Public Law No. 674, 77th Cong., 2d Sess.) intended that there should be compliance with state regulatory and inspection laws. These contentions are not sound.

The *Graves* case dealt with the validity of the application of a state income tax to the salary of an employee of the Home Owners' Loan Corporation, a Government corporation. The corporation itself, "including its franchise, its capital, reserves and surplus, and its loans and income", was exempted from state taxation by Section 4 of the Home Owners' Loan Act. The single question before the Court was "whether the tax laid by the state upon the salary of respondent, employed by a corporate instrumentality of the federal government, imposes an unconstitutional burden upon that government" (306 U. S. at 477), i. e., whether the exemption of the Government and its instrumentalities from state taxation extended to immunize the salaries of its employees from state taxation. The Court pointed out that the inquiry was the same as if the Court were dealing with a constitutional immunity, that is, whether the imposition of the tax would place a burden on the Government so as to interfere with its functions. The Court in no way suggested a departure from or any modification of the constitutional immunity of the Government itself, or of its corporations, from state taxation, no matter how non-discriminatory and how slight its actual burden. Indeed, the Court assumed that the Home Owners' Loan Corporation was "clothed with the same immunity from state taxation as the government itself" (306 U. S. at

486), but held that this immunity could not be extended to salaries of employees.

There is no hint in the Appropriation Act here involved (Public Law 674, 77th Cong., 2d Sess.) of intention to subject the Government to state inspection laws. The statute appropriated funds to be available for the purpose of the fertilizer, among other things, and for making grants thereof to agricultural producers, "and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof." This provision relates to such matters as freight expenses, administrative expenses, and other costs voluntarily incurred by the Government; it has no apparent relation to state inspection fees imposed by state statute regardless of the owner's consent. A waiver of a constitutional immunity is not to be inferred from statutory language so susceptible of meaningful construction without the implied abandonment of an established governmental privilege. Cf. *United States* v. *Michel,* 282 U. S. 656; *Price* v. *United States,* 174 U. S. 373; *Schillinger* v. *United States,* 155 U. S. 163; *United States* v. *Shaw,* 309 U. S. 495.[19]

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[19] The Congressmen and Senators from Florida introduced several bills in Congress for the express purpose of subjecting the Government to the inspection laws of the states in carrying out the program here involved. See H. R. 7824, 77th Cong., 2d Sess.; S. 2914, 77th Cong., 2d Sess.; H. Rep. No. 2688, 77th Cong., 2d Sess.; H. R. 1396, 78th Cong., 1st

Appellants' reliance (Br. 33) on *United States* v. *California,* 297 U. S. 175, is mistaken. That case held that a state-owned railway was a common carrier under the Federal Safety Appliance Act and subject to a statutory penalty for violation of the Act. Cf. *Ohio* v. *Helvering,* 292 U. S. 360; see also *South Carolina* v. *United States,* 199 U. S. 437. These decisions were expressly placed on the ground that the states, having engaged in business traditionally of a private nature, could no longer claim any sovereign immunity. See 292 U. S. at 369; 297 U. S. at 183–186.

Appellants urge that since the states may thus be subject to Federal regulation and taxation, the converse must also be true (Br. 33). But that contention has long since been rejected. The immunity of the Federal Government and that of the states are not coextensive, as the supremacy clause of the Constitution itself indicates. See *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, 477–478. And, apart from the constitutional provision, the nature of our federal system necessarily requires "possible differences in application, deriving from differences in the source, nature and extent of the immunity of the governments and their agencies." *Id.,* at p. 478. In *Helvering* v. *Gerhardt,* 304 U. S. 405, these differences and their justification were presented as follows (p. 412):

Sess.; S. 417, 78th Cong., 1st Sess.; S. 150, 78th Cong., 1st Sess. These have not been enacted into law.

> In sustaining the immunity from state taxation, the opinion of the Court, by Chief Justice Marshall [in *McCulloch* v. *Maryland*] recognized a clear distinction between the extent of the power of a state to tax national banks and that of the national government to tax state instrumentalities. He was careful to point out not only that the taxing power of the national government is supreme, by reason of the constitutional grant, but that in laying a federal tax on state instrumentalities the people of the states, acting through their representatives, are laying a tax on their own institutions and consequently are subject to political restraints which can be counted on to prevent abuse. State taxation of national instrumentalities is subject to no such restraint, for the people outside the state have no representatives who participate in the legislation; and in a real sense, as to them, the taxation is without representation. The exercise of the national taxing power is thus subject to a safeguard which does not operate when a state undertakes to tax a national instrumentality.

Moreover, the Federal Government, unlike the states, derives its authority wholly from powers delegated to it by the Constitution; consequently, "its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all ac-

tivities of government constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation." *Graves* v. *N. Y. ex rel. O'Keefe,* 306 U. S. 466, 477; *Pittman* v. *H. O. L. C.,* 308 U. S. 21; *Federal Land Bank* v. *Bismarck Lumber Co.,* 314 U. S. 95, 102. Under these accepted doctrines, the weight or extent of the burden sought to be imposed by the state is immaterial. *Johnson* v. *Maryland,* 254 U. S. 51; *Pittman* v. *Home Owners' Corp.,* 308 U. S. 21, 32.[20]

But appellants further seek to avoid the conclusion that the Florida Law cannot constitutionally be applied to the United States by contending (Br. 38–41) that the United States was engaged in a deliberate attempt to evade the Florida inspection laws.[21] Thus appellants suggest that the Government purchased the fertilizer

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[20] Appellants urge that the inspection fee, if permitted in this case, would not be paid by the Government because the amount could be deducted from the benefit payments to the farmers. But this does not alter the obvious impact of the inspection fee upon the Federal Government, especially since the only funds involved in this program are federal funds. Appellants' argument is tantamount to the proposition that a state can levy a property tax on a federal building because the Government can increase the rent to a tenant.

[21] Appellants' assertion (Br. 36) that the Government does not own the land on which the fertilizer was to be used and that the land was subject to the jurisdiction of the State of Florida is beside the point. The Government is not asserting jurisdiction over lands in the State of Florida. In *Ohio* v. *Thomas*, 173 U. S. 276, holding a state regulation constitutionally inapplicable to the federal function of operating a soldier's home, the Court said (p. 283): "In assert-

in Georgia for shipment into Florida for the express purpose of securing immunity from the Florida law. Moreover, they urge that the Government is merely a conduit in effecting a transfer of fertilizer from the manufacturer to the farmer, that the farmer is the real purchaser, and that the Federal Government "pays out no monies because of the State Inspection Fee" (Br. 40). The court below properly rejected these contentions.

Aside from the circumstance that the Government does not predicate its claim of immunity on the fact that interstate shipments are involved in this case, and assuming appellants' assertions relating to the Government's motives to be relevant, it is readily apparent from the record that the purchases of fertilizer were not made in Georgia for the purpose of evading Florida law. The Government purchases fertilizer pursuant to a policy which is economically sound and which keeps the price to farmers (by way of deduction from benefit payments) relatively uniform (R. 96–100). The record shows that by reason of the

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ing that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece of land, in opposition to the lan- ·ge of the act of Congress ceding back the jurisdiction the United States received from the State. The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to and by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed."

purchasing system established, the cost of fertilizer to Florida farmers is $16.10 per ton, which is deducted from their benefit payments, and this amount "compares favorably with the current commercial price of the same material available for sale in Florida by Florida manufacturers of not less than $20.00" (R. 100). Moreover, the fertilizer producing companies in Georgia are nearer to the Florida points of delivery involved in this case than are the producing companies in Florida, and the freight charges from the Georgia shipment points were considerably less (see R. 100A). Indeed, an analysis of the freight rates for fertilizer coming from Georgia to *all* points in Florida, as opposed to the rates to those points from Florida points of shipment, discloses that in all but two instances the interstate rates were considerably less. In the light of these undisputed facts, the purchase of the fertilizer in Georgia can hardly be found to constitute a scheme to evade Florida law, and the contrary conclusion was properly reached below.

Equally without basis is the contention that the Government was merely a conduit to effect a transfer of fertilizer from manufacturer to farmer. Appellants make no attack on the validity of the transactions of purchase, nor could they, for the record shows, and the court below found, that the Government bought, paid for, and owned the fertilizer involved. Nor was the fertilizer sent by the manufacturers directly to

farmers, as appellants allege. It was sent under Government bills of lading to Federal Agricultural Associations, which are agencies of the United States (R. 113, 114), and the fertilizer was in the possession of those Government agencies when seized. Indeed, far from being an evasion of the state fertilizer regulations, the federal program was the *sine qua non* of the use of the fertilizer by the Florida farmers, for the record shows that without the stimulation of production consequent upon the large-scale Government purchases, there would not have been a sufficient supply of the fertilizer available, and that without the credit extended on account of future benefit payments the farmers in question would be unable to buy the fertilizer even if it were available (R. 10).

With these undisputed facts in the record, there is no room for the contention that the Government's program was undertaken for the purpose of wrapping a cloak of immunity about transactions which otherwise would be subject to state regulation. The fact that the applicability of state regulation may to some extent be curtailed by the Government's activity is of little relevance; for such curtailment naturally attends every exercise of the supreme federal power in a field to which state law may be or has been directed.[22]

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[22] For example, a state statute of limitations may commence to run against a right to recover upon a negotiable instrument, but if the instrument is transferred to the United

Appellants also seem to rely on a contention that the fertilizer owned by the United States was substandard (Br. 6–7; R. 101–103). While not legally pertinent to the principles of sovereign immunity, it should be noted that the Government was not engaged in distributing fertilizer of an inferior grade. The contracts of purchase of the fertilizer from the producing companies provide for analysis of the fertilizer by the Government "according to the method prescribed by the American Association of Official Agricultural Chemists" (R. 79), the very method required by the Florida Law (Sec. 576.18), and provide for rejection of fertilizer falling below certain standards (R. 79). The analysis of the fertilizer is made not only to satisfy the United States that the materials delivered comply with the contract specifications, but also "for the purpose of ascertaining that the farmers participating in this phase of the agricultural conservation program are receiving superphosphate of sufficient quality to enable them to carry out desirable soil building practices" (R. 79–80). Each container of fertilizer must be labelled and tagged by the manufacturer to disclose its phosphoric acid content, in accordance with instructions from the Department of Agriculture (R. 13). After they receive the fertilizer, the Federal Agricultural Associations

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States, its sovereign immunity prevents the accrual of the bar under state law. See, e. g., *United States* v. *Summerlin*, 310 U. S. 414.

are required by official instructions of the Department of Agriculture to take samples in conformity with the rules of the American Association of Official Agricultural Chemists, and to submit such samples to the local state laboratories for analysis (R. 80–81). Analysis by state agencies in the state concerned is welcomed by the Government, and while many states provide this service free of charge, the Government is willing to pay for such services on a contract basis and has done so in some states (R. 81–96). Where arrangements with state laboratories cannot be made, the Agricultural Associations, pursuant to official instructions, mail the samples to the federal laboratories in Beltsville, Maryland (R. 80). In all instances the actual cost of the inspection provided by the Government is less than the statutory fee imposed by state laws (R. 81). The presumption that the Government officials have carried out their prescribed duties under the Federal Act to accept fertilizer of approved analysis only (cf. *Johnson* v. *Maryland*, 254 U. S. 51, 57) need not rest upon speculation here, for it has been proved beyond question.

But the scrupulous care exercised by the Federal Government to assure that only a high grade of fertilizer will be distributed under its program, and the Government's voluntary utilization of state laboratories to analyze the materials, on a fee basis where gratuitous services are not offered, do not invite or justify the imposition of an in-

spection fee upon the Government-owned fertilizer, particularly a fee imposed upon a tonnage basis and having no relation to actual inspection (R. 81–96). Much less does the Government's program authorize or permit seizure of the federal property by state officials for failure to pay the fee exacted without federal consent.

B. Even if the Florida Law could constitutionally be applied to the Government-owned fertilizer, so as to subject it to the inspection and fee requirements, the seizures by appellants were unlawful and unconstitutional.

The immunity of federal property from seizure or attachment is traditional. *The Siren,* 7 Wall. 152; *The Western Maid,* 257 U. S. 419, 433; *Minnesota* v. *United States,* 305 U. S. 382, 386; *United States* v. *Alabama,* 313 U. S. 274, 282; *Maricopa County, Arizona* v. *Valley Nat. Bank of Phoenix,* No. 449, this Term, decided March 1, 1943.[23] The majority below was plainly correct in holding that "the property of the United States is immune from seizure, even to collect a valid tax,

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[23] No suggestion can be made that the doctrine of immunity from seizure is limited only to instances where the seizure is pursuant to court order. The fact that the fertilizer here was taken by executive action pursuant to state legislative authority, would seem to make this an *a fortiori* case. Any attempt by Florida officials to sell the fertilizer pursuant to court order would have been given short shrift. *United States* v. *Alabama,* 313 U. S. 274. The executive arm of the state cannot be more effective to impair a federal constitutional immunity.

and certainly * * * to collect a valid fee" (R. 122).[24]

CONCLUSION

For the foregoing reasons the decision of the court below should be affirmed.

Respectfully submitted,

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APRIL 1943.

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[24] The dissenting judge below agreed with the majority "that the State was probably without power to seize property of the United States, to wit, the fertilizer in question" (R. 118), but he considered the seizure "as purely procedural" (R. 118).

APPENDIX

1. The Soil Conservation and Domestic Allotment Act (16 U. S. C., secs. 590g–590q) provides:

> SEC. 590g. ADDITIONAL POLICIES AND PURPOSES OF CHAPTER.
>
> (a) *Purposes enumerated.*—It is hereby declared to be the policy of sections 590a–590h, 590i, 590j–590q, of this title also to secure, and the purposes of such sections shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms that prevailed during the five-year period August 1909–July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio. The powers conferred under this section and sections 590h, 590i, 590j–590n, of this title shall be used to assist

voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this section due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

(b) *Cooperation with States; grants.*—The Secretary of Agriculture shall cooperate with States, in the execution of State plans to effectuate the purposes of this section by making grants under this section, to enable them to carry out such plans.

(c) *State plans.*—Any State which submits to the Secretary, prior to such time and in such manner and form as the Secretary prescribes, a State plan to effectuate the purposes of this section shall be entitled to payments, as provided in this section, for the year to which such plan is applicable, if such plan is approved by the Secretary as provided in this section.

* * * * *

SEC. 590h. PAYMENTS AND GRANTS OF AID.

(a) *Duration of authority of Secretary of Agriculture.*—In order to carry out the purposes specified in section 590g (a) of this title during the period necessary to afford a reasonable opportunity for legislative action by a sufficient number of States to assure the effectuation of such purposes by State action and in order to promote the more effective accomplishment of such purposes by State action thereafter, the Secretary shall exercise the powers conferred in this section during the period prior to January 1, 1942, except with respect to farming operations commenced in any State after the effective date of a State plan for such State approved pursuant to section 590g of this title. No such powers shall be exercised after December 31, 1941, except with respect to payments or grants in connection with farming operations carried out prior to January 1, 1942.

(b) *Payments and grants of aid; local, county, State committees; rules and regulations.*—Subject to the limitations provided in subsection (a) of this section, the Secretary shall have power to carry out the purposes specified in clauses (1), (2), (3), (4), and (5) of section 590g (a) of this title by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes during the year with respect to which such payments or grants are made, and measured by (1) their treatment or use of their land, or a part thereof, for soil restoration, soil conservation, or the prevention of erosion; (2) changes in the use

of their land; (3) their equitable share, as determined by the Secretary, of the normal national production of any commodity or commodities required for domestic consumption; or (4) their equitable share, as determined by the Secretary, of the national production of any commodity or commodities required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland on the farm conforms to farming practices which the Secretary determines will best effectuate the purposes specified in section 590g (a) of this title; or (5) any combination of the above. * * * In carrying out the provisions of this section in the continental United States, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually, the county committee for the county which shall consist of three members who are farmers in the county. * * * In carrying out the provisions of this section, the Secretary shall, as far as practicable, pro-

tect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices.

The following paragraph was added to the foregoing section 590h (b) by the Act of June 21, 1941 (16 U. S. C., Supp. I, sec. 590h (b):

> Notwithstanding any other provision of law, in making available conservation materials consisting of seeds, seed inoculants, fertilizers, liming, and other soil-conditioning materials, trees, or plants, or in making available soil-conserving or soil-building services, to agricultural producers under this subsection, the Secretary may make payments, in advance of determination of performance by the producers, to persons who fill purchase orders covering

approved conservation materials or covering soil-conserving or soil-building services, furnished to producers at not to exceed a fair price fixed in accordance with regulations to be prescribed by the Secretary, or who render services to the Secretary in delivering to producers approved conservation materials, for the carrying out, by the producers, of soil-building or soil-conserving practices approved by the Secretary.

* * * * *

(d) *Conditions affecting payments or grants of aid.*—Any payment or grant of aid made under subsection (b) shall be conditioned upon the utilization of the land, with respect to which such payment is made, in conformity with farming practices which the Secretary finds tend to effectuate any one or more of the purposes specified in clause (1), (2), (3), (4), or (5) of section 590g (a) of this title.

* * * * *

SEC. 590k. AVAILABILITY OF FUNDS.

All funds available for carrying out sections 590a–590h, 590i, 590j–590q, of this title shall be available for allotment to the bureaus and offices of the Department of Agriculture and for transfer to such other agencies of the Federal or State Governments as the Secretary may request to cooperate or assist in carrying out this chapter, and for payments to committees or associations of producers in any region or regions to cover the estimated administrative expenses to be incurred by any such committee or association in cooperating in carrying out such sections: ***Provided,*** That the Secretary may prescribe that all or

part of such estimated expenses of any such committee or association may be deducted pro rata from the payments or grants made to the members thereof: *And provided further,* That the Secretary may make such payments in advance of determination of performance. (Apr. 27, 1935, ch. 85, § 11, as added Feb. 29, 1936, ch. 104, § 1, 49 Stat. 1150, and amended June 24, 1936, ch. 767, 49 Stat. 1915).

* * * * *

SEC. 590o. APPROPRIATION FOR PURPOSES OF SECTIONS 590g AND 590h; ALLOCATION OF FUNDS AMONG COMMODITIES.

To enable the Secretary of Agriculture to carry out the purposes of sections 590g and 590h of this title there is hereby authorized to be appropriated for any fiscal year not exceeding $500,000,000.

* * * * *

Public Law No. 674 (77th Congress, 2d sess., p. 31) approved July 22, 1942, provides as follows:

* * * * *

To enable the Secretary of Agriculture to carry into effect the provisions of sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended (16 U. S. C. 590g–590q), and the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1281–1407) (except the making of payments pursuant to sections 303 and 381 and the provisions of titles IV and V), including the employment of persons and means in the District of Columbia and elsewhere; not to exceed $50,000 for the preparation and display of exhibits, including such displays at State, interstate, and international fairs within the United States;

purchase of lawbooks, books of reference, periodicals, newspapers, $450,000,000 to remain available until June 30, 1944, for compliances under said Act of February 29, 1936, as amended, pursuant to the provisions of the 1942 programs carried out during the period July 1, 1941, to December 31, 1942, inclusive: * * * *Provided further,* That such amount shall be available for the purchase of seeds, fertilizers, lime, trees, or any other farming materials, or any soil terracing services, and making grants thereof to agricultural producers to aid them in carrying out farming practices approved by the Secretary of Agriculture in the 1942, 1943, and 1944 programs under said Act of February 29, 1936, as amended, and likewise the amount appropriated under this head for the fiscal year 1942 shall be available for such purchases for such grants in the 1941, 1942, and 1943 programs under such Act; for the reimbursement of any Federal, State, or local government agency for fertilizers, seeds, lime, trees, or other farming materials, or any soil terracing services, furnished by such agency; and for the payment of all expenses necessary in making such grants including all or part of the costs incident to the delivery thereof: * * *

* * * * *

2. The Florida Commercial Fertilizer Law (Florida Statutes, 1941, c. 576) provides in part as follows:

> 576.01 *Definitions.*—In construing this chapter, where the context permits, the word, phrase or term:
>
> (1) "Fertilizer material" shall be construed to mean any material or substance,

except untreated or unprocessed animal, poultry, or vegetable manure, when applied separately, which may be used in the manufacture of mixed fertilizer or which may be applied to the soil for the purpose of improving it or for the purpose of inducing increased crop yield or plant growth.

* * * * *

(3) "Commercial fertilizer" shall be construed to mean and include fertilizer materials or mixed fertilizer.

* * * * *

(10) "Manufacturer" means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word "manufacture" means preparation, mixing, or manufacturing.

* * * * *

(13) "To import" and the word "importing" shall be construed as meaning the bringing of commercial fertilizer into this state from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state, and the word "importer" shall be construed as meaning the person who brings in commercial fertilizer from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state.

* * * * *

576.03. *Report required of manufacturers, etc., prior to sale of fertilizers.*—Every manufacturer or importer of, or agent for, the sale of commercial fertilizer within this state shall, previous to offering commercial

fertilizer for sale in this state, and annually thereafter on or before July 1st and before offering for sale thereafter, file with the commissioner of agriculture a written statement giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis under oath of each brand of mixed fertilizer or fertilizer material offered for sale by him, but he shall not be permitted to register any brand of mixed fertilizer of which the available primary plant food constitutes less than fourteen percent; provided, however, that the commissioner of agriculture, upon request from any manufacturer, shall issue a permit to said manufacturer permitting him to manufacture mixed fertilizer of less than fourteen percent available primary plant food when said request is accompanied with a copy of the complete formula showing in detail all ingredients and the amount of each to be used; and provided further that the state chemist has examined and approved such a permit. All provisions of this law shall apply to manufacture and sale of mixed fertilizer under said permit.

576.04 *Registration of brands and mixtures.*—It is unlawful for any manufacturer, importer, or agent for the sale of commercial fertilizer to sell or make delivery of such commercial fertilizer before the registration thereof has been accepted by the commissioner of agriculture and the manufacturer, importer, or agent notified of such acceptance by the commissioner of agriculture.

Any change in or deviation from the information filed upon registration of brands of mixed fertilizers with the commissioner

of agriculture shall constitute a separate brand and shall require a separate registration; provided, however, that secondary plant foods may be added to a brand already registered so long as such addition does not in any way change or qualify any other requirements of the registration previously made, and such addition of secondary plant foods shall not require an additional registration. A mere change in the analysis or percentage of plant food for a fertilizer material shall not constitute a separate fertilizer material, but shall require an additional registration.

576.05 *Reports to be made as to certain shipments.*—Every manufacturer, shipping or delivering commercial fertilizer in lots of one or more tons, shall notify the commissioner of agriculture thereof on the date of such shipment, giving the name and address of consignee, point of destination, and county in which located, quantity and brand or brands, and if shipped by rail in carload lots, the number and initial of the car.

* * * * *

576.07 *Analysis of fertilizers to be shown on tag, etc.*—

(1) Every package of commercial fertilizer, manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State of Florida, shall have securely attached a tag on which shall be plainly and legibly printed the name or brand of the commercial fertilizer, the name and address of the manufacturer, the net contents of the package in pounds, stating the minimum percentage of total nitrogen, the minimum percentage of nitrate nitrogen, the

minimum percentage of ammoniacal nitrogen, the minimum percentage of water soluble organic nitrogen, the minimum percentage of water insoluble nitrogen, the minimum percentage of available phosphoric acid, the minimum percentage of insoluble phosphoric acid, the minimum percentage of water soluble potash, the minimum percentage of total available primary plant food, and the maximum percentage of chlorine. The sum of the various forms of nitrogen guaranteed shall equal the total nitrogen guaranteed. There shall also be stated on the tag the materials from which the above plant foods are derived.

* * * * *

576.11 *Inspection fee to be paid upon fertilizer materials.*—Every manufacturer or agent for commercial fertilizer shall pay to the state treasurer a fee of twenty-five cents per ton for commercial fertilizer offered for sale in the State of Florida, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be ten cents per ton. Five cents out of each fee so paid shall be placed into a special fund and not into the general inspection fund of the state, and said special fund shall be available to the commissioner of agriculture for use in enforcing this law; provided that when the manufacturer shall have paid the fee herein named for any person acting as agent or seller for any manufacturer, the agent or seller shall not be required to pay the fee named in this section.

This section shall not be construed as applying to sales of commercial fertilizer by one manufacturer to another.

* * * * *

576.15 *Duty of sheriff.*—The sheriffs of the counties of this state are hereby authorized, and it is hereby made their duty to seize and sell at public sale, each and every bag, barrel or package of commercial fertilizer, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, manufactured, imported into or sold in this state, which shall not have securely attached the tag or label and stamp mentioned in this chapter. Provided, that should the owner show to the satisfaction of the sheriff that such tag or label or stamp had been attached and the same had become detached, the sheriff shall release the same without cost to the owner.

* * * * *

576.26 *Selling unstamped or untagged fertilizers.*—Any person who shall manufacture, import, transport, distribute, store, keep or offer for sale, or sell any package of commercial fertilizer or fertilizer material that fails to have attached the tag, or the tag fails to bear the information, required by this chapter, or in case of bulk shipments that fail to have the tag affixed to the car or the copy of the invoice required, or if the said tag fails to have attached the stamp or label showing the payment of the fee required, shall be guilty of a violation of this chapter. The provisions of this section shall not apply, however, where the materials are stored by the manufacturer for mixing purposes or stored by them in public warehouses.

576.27 *Fines and penalties.*—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction, unless otherwise provided, be fined not less than one hundred dollars, nor more than five hundred dollars for each offense.

* * * * *

3. Pertinent provisions of the Constitution of the United States provide as follows:

Article I, Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *

Article IV, Section 3. * * *

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *

Article VI. * * *

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; * * *.

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SUPREME COURT OF THE UNITED STATES.

No. 726.—October Term, 1942.

Nathan Mayo and Roy Hutchinson, Appellants, *vs.* The United States of America.	Appeal from the District Court of the United States for the Northern District of Florida.

[June 1, 1943.]

Mr. Justice Reed delivered the opinion of the Court.

This record presents for review the action of a specially constituted district court in enjoining, on final hearing, the Commissioner of Agriculture of the State of Florida and his agents from enforcing against the United States the provisions of the Florida Commercial Fertilizer Law. Judicial Code, §§ 266 and 238.

By this Florida act the sale or distribution of commercial fertilizer is comprehensively regulated. There is included a requirement of a label or stamp on each bag evidencing the payment of an inspection fee. Unless so identified, the bags may be seized and sold by the sheriff of the county. The purpose of the legislation is to assure the consumers that they will obtain the quality of fertilizer for which they pay and that substances deleterious to the land will be excluded from the material sold. Florida Statutes, 1941, c. 576.

The United States, under the direction of the Secretary of Agriculture, acting under the provisions of the Soil Conservation and Domestic Allotment Act,[1] purchased commercial fertilizer outside of Florida and undertook its distribution to consumers within that state during the fiscal year ending June 30, 1943, without state inspection and without paying for or affixing to the bags the inspection stamps required by the Florida act. This distribution was a part of the national soil conservation program.[2] Through the use of fertilizers with a high content of superphosphate on winter legumes the plan sought, by plowing under the legumes, to obtain scarce nitrogen for the commercial

[1] 49 Stat. 163, 1148; 50 Stat. 329; 55 Stat. 257, 860; 56 Stat. 664.

[2] Sections 7 and 8 of the Soil Conservation and Domestic Allotment Act, as amended.

crops which were to follow. To secure a heavy growth of the legumes before plowing time, the fertilizer should be applied and the legumes planted prior to October 15th. Farmers who desire to participate in the conservation program follow the required practices under the supervision of county committees or associations which are federal instrumentalities for carrying out the plans. Section 8(b).

The soil-building and soil-conserving practices, when carried out by a participating farmer, entitle him to a grant or benefit payment. Section 8. In order that the farmer may earn this grant, phosphate fertilizers are furnished to him in advance by the Government through the county committee. The cost is deducted from the grant. For the purpose of carrying out the program, the United States caused fertilizers purchased by its agents to be shipped into Florida to the local agricultural associations for such distribution. As the sacks were without stamps, the Florida Commissioner of Agriculture on September 10, 1942, gave a "stop sale" notice to the county agricultural association to cease distribution.

The Attorney General of the United States directed the filing of a complaint against the Florida officials who are charged with the enforcement of the Florida law. The complaint set out the "stop sale" notice, the refusal of numerous persons utilized by the United States in its work to proceed with the distribution of the fertilizer without the protection of an injunction, the frustration of the conservation program of the Secretary of Agriculture, the imminency of irreparable damage because of the necessity of prompt distribution of the fertilizer and the lack of any efficient remedy other than a temporary and permanent injunction. Florida objected to the complaint for failure to state a cause of action and set up numerous defenses which have now been reduced by the specification of errors and the brief to the fundamental one that the United States as to fertilizer to be used upon Florida soil is not exempt by Constitution or statute from compliance with reasonable state regulation or the payment of reasonable inspection fees. At any rate, it is urged, inspection fees may be collected under the facts heretofore stated as the Government is merely a conduit or service agent for the fertilizer manufacturer or the Florida farmer.

The District Court disposed, we think, of the conduit or service agent argument by its finding that the Government "became the

owner'' of the fertilizer at the manufacturing plants which are outside the state and was engaged in distributing it in Florida as a part of the national soil conservation program. In promoting soil conservation by precept and demonstration through the Department of Agriculture, the United States, as in its other authorized activities, acts in a governmental capacity.[3] Prior to the Soil Conservation Act, Congress had, as a matter of custom, put money and responsibility in the hands of the executive to promote agriculture in the most general sense. It is commonplace for appropriations to be made for loans to farmers.[4] The distribution of fertilizer owner by the United States as a charge against grants to aid soil conservation is of the same character. Section 8(b). Cf. *United States* v. *Butler,* 297 U. S. 1, 65, 68. No inference of fact or conclusion of law, we think, can be properly drawn from the circumstances of this fertilizer distribution other than that the United States was the owner of the fertilizer in Florida awaiting distribution.

The other findings are substantially in accord with the allegations of the complaint and are not contested. The District Court, one judge dissenting, enjoined the application of Florida law to the above described acts of the United States on the ground of federal immunity from state regulation.

Since the United States is a government of delegated powers, none of which may be exercised throughout the Nation by any one state, it is necessary for uniformity that the laws of the United States be dominant over those of any state. Such dominancy is required also to avoid a breakdown of administration through possible conflicts arising from inconsistent requirements. The supremacy clause of the Constitution states this essential principle. Article VI. A corollary to this principle is that the activities of the Federal Government are free from regulation by any state.[5] No other adjustment of competing enactments or legal principles is possible.

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[3] Graves *v.* New York *ex rel.* O'Keefe, 306 U. S. 466, 477; Pittman *v.* Home Owners' Corp., 308 U. S. 21, 32; Fed. Land Bank *v.* Bismarck Co., 314 U. S. 95, 102.

[4] Establishment of the Department of Agriculture, 12 Stat. 387; of colleges of agriculture, 26 Stat. 417; Federal Farm Loan Act, 39 Stat. 360, 40 Stat. 431; Federal Intermediate Credit Banks, 42 Stat. 1454; Federal Farm Board, 46 Stat. 11; boll weevil grant, 45 Stat. 539, 565.

[5] McCulloch *v.* Maryland, 4 Wheat. 316, 427; Ohio *v.* Thomas, 173 U. S. 276, 283; Owensboro National Bank *v.* Owensboro, 173 U. S. 664, 667; Johnson *v.* Maryland, 254 U. S. 51; Arizona *v.* California, 283 U. S. 423, 451.

Appellants' argument in support of the inspection fee is that neither the Constitution nor any federal statute exempts the United States from paying reasonable state inspection fees to support permissible regulation of commercial fertilizer. Such inspections are allowable where the United States is not the owner. *Patapsco Guano Co.* v. *North Carolina,* 171 U. S. 345; *Red "C" Oil Co.* v. *North Carolina,* 222 U. S. 380, 392. Appellants urge that since they are allowable to protect the farmers against the imposition of fertilizers of quality possibly inferior to the manufacturers' representations, the inspection fee should be paid on fertilizers distributed by the United States, where the federal law is silent as to any exemption on the ground of sovereignty. Reliance is placed upon *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466.

It lies within Congressional power to authorize regulation, including taxation, by the state of federal instrumentalities.[6] No such permission is granted here. Compare 56 Stat. 664. Congress may protect its agencies from the burdens of local taxation.[7] There are matters of local concern within the scope of federal power which in the silence of Congress may be regulated in such manner as does not impair national uniformity.[8] There are federal activities which in the absence of specific Congressional consent may be affected by state regulation.[9] *Graves* v. *New York ex rel. O'Keefe, supra,* upon which appellants rely so strongly is in this latter group. In that case, an employee of the Home Owners' Loan Corporation, a Federal agency which was assumed to have the same immunity from state taxation as the United States itself, sought exemption from New York's income tax on the ground that a tax upon the employee's salary imposed an unconstitutional burden upon the federal government. This position was not without precedent.[10] Upon full reexamination of the authorities and the reasoning upon which the earlier cases had allowed the employees of one sovereignty freedom from the exac-

[6] Owensboro National Bank *v.* Owensboro, 173 U. S. 664, 667; Baltimore National Bank *v.* Tax Comm'n, 297 U. S. 209; Pacific Coast Dairy, Inc. *v.* Dept. of Agriculture of California, No. 275, October Term 1942, p. 5.

[7] Pittman *v.* Home Owners' Corp., 308 U. S. 21, and cases cited.

[8] Standard Dredging Corp. *v.* Murphy, No. 722, October Term 1942; California *v.* Thompson, 313 U. S. 109.

[9] Alabama *v.* King & Boozer, 314 U. S. 1, 9, and cases cited.

[10] Dobbins *v.* The Commissioners of Erie County, 16 Pet. 435; Collector *v.* Day, 11 Wall. 113; New York *ex rel.* Rogers *v.* Graves, 299 U. S. 401; Brush *v.* Commissioner, 300 U. S. 352.

tions of the other, this Court declared that in the absence of a federal declaration of immunity from state taxation, no such "tangible or certain economic burden is imposed on the [United States] as would justify a court's declaring that the [employee] is clothed with the implied constitutional tax immunity of the government by which he is employed." Page 486.

These inspection fees are laid directly upon the United States. They are money exactions the payment of which, if they are enforceable, would be required before executing a function of government. Such a requirement is prohibited by the supremacy clause. We are not dealing as in *Graves* v. *New York etc., supra,* with a tax upon the salary of an employee, or as in *Alabama* v. *King & Boozer,* 314 U. S. 1, with a tax upon the purchases of a supplier, or as in *Penn Dairies, Inc.* v. *Milk Control Comm. of Pennsylvania,* No. 399, October Term 1942, decided March 1, 1943, with price control exercised over a contractor with the United States. In these cases the exactions directly affected persons who were acting for themselves and not for the United States. These fees are like a tax upon the right to carry on the business of the post office or upon the privilege of selling United States bonds through federal officials. Admittedly the state inspection service is to protect consumers from fraud but in carrying out such protection, the federal function must be left free.[11] This freedom is inherent in sovereignty. The silence of Congress as to the subjection of its instrumentalities, other than the United States, to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction. *Shaw* v. *Oil Corp'n,* 276 U. S. 575, 578. But where, as here, the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues.

Affirmed.

Mr. Justice BLACK concurs in the result.

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[11] Similar conclusions have been reached in adjacent fields. The state is powerless to punish its citizens for acts done in exclusively federal territory. Pacific Coast Dairy, Inc. v. Dept. of Agriculture of California, No. 275, October Term 1942, decided March 1, 1943. A state cannot tax land of the United States situated within the state even though the state has not ceded sovereignty to the United States. Van Brocklin v. Tennessee, 117 U. S. 151, 177.